

2018 Edition

# CODE RED:

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## COMPUTERIZED ELECTIONS and the WAR on AMERICAN DEMOCRACY

Jonathan D. Simon



**CODE RED** is about what has happened to American elections, American politics, and America since computers took over the vote counting a few short years ago. It is a compelling call to action, about saving our democracy and our country. Now, before it's all gone.

**Jonathan D. Simon is Executive Director of Election Defense Alliance, founded in 2006 to restore observable vote counting as the foundation of American democracy.**

*There are genuinely difficult problems facing us as a nation and as a species in the years to come: climate change, over-population, food and resource distribution, weapons control, the privacy-versus-security dilemma, . . . just to name a few . . . Compared to these challenges, the basic counting of votes—in an observable way that ensures the legitimacy of our elections—is an easy assignment. We need only to break a spell that has been cast on us—a spell of convenience, passivity, helplessness. We need only remember that democracy is not something that we watch; it is something that we do.*

**Jonathan Simon, CODE RED**

*A spirited, data-driven argument that our computerized voting system is frighteningly vulnerable to corruption.*

**Kirkus Reviews**

*As a professional statistician, I found CODE RED's data, analysis, and conclusions compelling.*

**Dr. Elizabeth Clarkson; Chief Statistician, National Inst for Aviation Research**

*Jonathan Simon's CODE RED is unique, easy-to-understand, and vastly important.*

**Andrew Kreig, Justice Integrity Project**

*Simon dives in with a question-and-answer section that puts the major facts out there for people to examine and evaluate for themselves. We owe it to ourselves and the tattered system we hold dear to do that. The sooner the better.*

**Joan Brunwasser, Op-Ed News**

*Jonathan writes in a clear, compelling, dramatic style—as befits his passion for the truth.*

**Richard Charnin, author of Matrix of Deceit**

*Jonathan Simon's research is thorough and his case is more than compelling . . . He has provided an important public service.*

**John Zogby, Founder of The Zogby Poll**

**[www.CODERED2018.com](http://www.CODERED2018.com)**

**US \$21.95**

# **CODE RED:**

**Computerized Elections**

**and**

**The War**

**on**

**American Democracy**

**Election 2018 Edition**

**Jonathan D. Simon**

**[www.CODERED2018.com](http://www.CODERED2018.com)**

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## **Praise for *CODE RED*:**

Jonathan Simon's *CODE RED* is unique, timely, easy-to-understand, and vastly important. The book uses an innovative Q&A format to enable readers to comprehend why computerized elections fraud represents an unprecedented challenge to democracy. The author has been a pioneering expert in this research, which has been widely ignored by traditional watchdog institutions and the political media. His book provides a convenient news-peg for them to start doing their jobs instead of continuing the go-along, get-along game.

***Andrew Kreig, Justice Integrity Project director and author of Presidential Puppetry: Obama, Romney and Their Masters***

*CODE RED* by Jonathan Simon, co-founder of Election Defense Alliance, is not a fun read. Nor was it fun to write, Simon admits. But that doesn't make it any less important. Simon sees our nation heading over a cliff, democratically speaking; hence, his sense of urgency. He is desperate for us to get active and do something, but without the facts we are powerless. And without familiarity with computerized election history, there is no context in which to comprehend what has happened in recent electoral contests.

As Simon says, in his Foreword, "The Big Picture of American politics has become an ugly one and one that will only get uglier with time and inaction. So let's take an unblinking look at what the hell is happening to America and what we still just might be able to do about it." He dives in with a question-and-answer section that puts the major facts out there for people to examine and evaluate for themselves. We owe it to ourselves and the tattered system we hold dear to do that. The sooner the better.

***Joan Brunwasser, OpEd-News***

In 2004 Jonathan Simon downloaded state-by-state CNN screenshots of the first-posted exit polls. It was the seminal event which fueled the efforts of election analysts to investigate the mathematical probabilities of the one-sided exit poll-votecount disparities. But now we know that 2004 was not unique; many elections in what Simon refers to as "The New American Century" have deviated sharply from the unadjusted exit polls—and virtually always in the same direction. It is solid mathematical evidence of systemic election fraud. Were it not for Jonathan's foresight, it is unlikely that any of this information would have come to light.

But 2004 was just the beginning. Jonathan analyzed the 2006 midterms in which the Democratic landslide was denied; the 2008 presidential election in which Obama's true margin was reduced drastically; Martha Coakley's strange "loss" in the Massachusetts special election for the U.S. Senate seat previously held by the late Ted Kennedy; and the bizarre national election that followed in November 2010. He now has taken on the even more bizarre 2014.

Jonathan writes in a clear, compelling and dramatic style—as befits his passion for the truth and the urgent need for an observable vote-counting system, as opposed to the sham that has corroded our reputation as the world's greatest democracy.

This book cannot be more highly recommended.

***Richard Charnin, author of Matrix of Deceit***

*CODE RED* lays out the case that election fraud has been occurring via the targeting and manipulation of computerized voting equipment across America.

Dr. Simon supports his conclusions with detailed and extensive data-gathering and analysis. He asks why we continue to entrust our voting process to this inherently non-transparent and vulnerable equipment. And he shows us how we can restore an observable process and reclaim ownership of our democracy.

As a professional statistician, I found *CODE RED*'s data, analyses, and conclusions compelling.

***Dr. Elizabeth Clarkson; Chief Statistician, National Institute for Aviation Research, Wichita State University***

Whenever a U.S. election ends with an astounding "upset victory" (of late a weirdly normal "fluke" in the United States), the watchdogs of our Free Press quickly tell us *why* the likely winner didn't win—confidently noting the fatuity of the exit polls and all the previous opinion polls; the losing campaign's glaring tactical and/or strategic errors; how this or that key bloc of voters inexplicably did not turn out, while this or that one *did*, in record numbers; these social, cultural and/or economic trends, and/or those technological advances; this or that Big Story in the news, the weeks or last few days before Election Day; and/or whatever else might help explain that inexplicable "defeat" away.

From that flash-flood of journalistic speculation, partisans on either side absorb whichever notions suit their own world-view. Thus Trump's folk ferociously repeat the media's repentant mantra that "the media got it wrong" before Election Day, blind to Trump's "deplorable" majority support in Michigan, Wisconsin, and Pennsylvania. Thus Hillary's troopers tell each other what both Hillary and the media have all bitterly asserted since Election Day: that Hillary lost because of Putin and the FBI, Jill Stein and misogyny. Meanwhile, those

who voted (or tried to vote) for Sanders and/or Stein have *their* self-serving take on Trump's outrageous victory, arguing that he prevailed because a (bare) majority (in certain states) detested Hillary as much as they do, and for the same reasons.

All that tribal yammering about the *how* and *why* of Trump's election is as credulous as it is uninformed; for there is, in fact, no solid evidence that Trump *did* win—any more than Clinton had really won her party's nomination.

As Jonathan Simon masterfully explains in this essential new edition of *CODE RED*, there *is* compelling evidence that both of those unlikely "victories" were likely products of rampant vote suppression and computerized election fraud. Those anti-democratic means seem to have been increasingly deployed throughout this century to thwart the will of the American electorate—as Simon has been warning expertly, and tirelessly, in countless articles and interviews, and in successive editions of this essential book, which *all* of us must read, so we can finally grasp what's really happened here, and know what we must do to make things right, before it really is too late.

**Mark Crispin Miller, Professor of Media, Culture, and Communication, New York University; Guggenheim Fellow (2011); author of *Foiled Again: The Real Case for Electoral Reform and Cruel and Unusual*, and editor of *Loser Take All: Election Fraud and the Subversion of Democracy, 2000-2008***

On one level, *CODE RED* is straightforward and refreshingly direct. No punches are pulled. But that doesn't make it easy to absorb. So many things I used to believe must be re-thought. Amid the upheaval, I remind myself of a profoundly optimistic consequence of all this gut-wrenching shift in perspective.

I had thought democracy had just failed. People are too stupid, too easily manipulated. The power of money to corrupt politicians and to buy propaganda has just overwhelmed our democratic machinery.

But now I see we may not have given democracy a chance. Before we give up on majority rule, let's try counting the votes in an open and verifiable process. Before we talk about a revolution or a new Constitutional Convention, let's dust off the Constitution we've got, exercise the rights it gives us, and see how far it can take us.

**Josh Mitteldorf, PhD**

**Co-author (with Dorion Sagan) of *Cracking the Aging Code***

*CODE RED* is a spirited, data-driven argument that our computerized voting system is frighteningly vulnerable to corruption. ... Simon—the executive director of Election Defense Alliance, a nonprofit voting-rights watchdog—

argues that what at first appears to be a triumph of progress, the widespread application of new voting technology, actually generates myriad opportunities for partisan sabotage. ...[T]he allure of greater convenience comes at the price of transparency: newly secretive elections ... take place in the “impenetrable darkness of cyberspace.” ... The scope of the book is broad, covering related topics like campaign finance and gerrymandering, and includes an instructive discussion of exit polls and Internet voting... Much of the work is written in a “Q&A format,” which makes for highly readable prose, ... an often-rigorous account of an important issue.

***Kirkus Reviews***

Stalin is rumored to have said it best: “It’s not who votes that counts, it’s who counts the votes.” American exceptionalism notwithstanding, such thoughts have a way of crossing borders. Games are games, wherever played. What *CODE RED* refuses to do is give America a pass *because it is America*.

Jonathan Simon, whose experience in election forensics dates to the very beginning of America’s computerized voting era, doesn’t blanch at the evidence and turn politely away. Where he comes out is pretty simple: until we return to counting votes in public, we will be putting everything we value at risk. If we don’t want the rapid decline of personal freedom, democracy, and moral integrity to continue, the first thing we need to do is secure our electoral and vote-counting processes against manipulation—by anyone.

Confronting the truth may depress you, but it will also give you the knowledge and the tools to take back the country. I hope we have the individual and collective fortitude to face how negligent we’ve been and see that there is a way out, if not an easy one.

***James Fadiman, PhD; author of Personality and Personal Growth***

Jonathan Simon has provided an important public service. *CODE RED* must not only be widely read and distributed among people who care about the integrity of our elections but should provide enough fodder for a comprehensive investigation of ballot counting procedures. Such an investigation needs to happen soon, and it cannot be conducted by congressional or other political leadership. Simon’s research is thorough and his case is more than compelling.

***John Zogby; Founder of the Zogby Poll***

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*To the memory of my parents, Ruth and Saul, who taught me to look into things; and to my daughter Emily, to whom it seems to come naturally.*

***Holly says tell folks the truth and they will sooner or later come to believe it, and Aaron says the same.***

**— Mark Harris, *The Southpaw***

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## FOREWORD to ELECTION 2018 EDITION

*Voting is a profound act of faith, a belief that even if your voice can't change policy on its own, it makes a difference.*

*-- The New York Times Editorial Board, March 11, 2018*

**So here we are. Welcome to the Age of Trump. If your 'faith' is a bit shaken,** if you are still wondering just how we got here, there are hundreds, perhaps thousands, of published accounts to map it all out for you. You know: the Clinton campaign this, the economy that, the white suburban voters without college the other thing . . .

As varied as they may be, what all these accounts have in common is the assumption that, one way or another, *we voted our way here*. That is to say, Americans collectively cast the billions of ballots that over the years of this New American Century added up to where we are now. As if we all got behind the wheel of the national car and somehow steered it to this destination, two wheels spinning over the edge of the cliff.

**That is not the account offered by this book.**

**CODE RED challenges the fundamental assumption that we voted our way over the cliff.** It challenges the fundamental assumption that votes have been counted as cast, that American voters have in fact been, at all points, steering the car, that we're really such awful drivers.

It instead explores the possibility that, since the dawn of the computerized vote-counting era and through a series of faith-based elections, the national car has behaved more like a self-driving car, programmer unknown. It examines those elections and the veer in American politics, culminating in the Age of Trump, that they have produced—reaching conclusions about who or

what has been driving the car that are both more chilling (it's not us) and more encouraging (it's not us) than anything else you are likely to read.

**Most important, it's a book to read if you're asking how we can re-take the wheel. Because, while it may be of some comfort to realize that we did not vote our way to this scary place, the correlate is that there is some serious and urgent work to be done if we are to be able to vote our way *out* of it.**

It is the thesis of this book that, in this new age of easy lies, the electoral system of the United States—and particularly its vote counting component—has itself become a lie, in a sense the worst and most dangerous of all the lies. If this blunt statement is too much for you, a more agnostic framing would be that the truth of our elections, whatever it may be, is incapable of verification. Our elections—and the leadership, policy, and national direction that depend on their results—are, at best, faith-based; at worst, catastrophically corrupted at their computerized core.

If even *that* is a message you don't want to hear, let alone act on, you are hardly alone. The resistance to it—political, journalistic, psychological, personal—is very strong indeed. All evidence indicates that our current predicament has been nearly two decades in the making, and that the Big Lie long pre-dated the advent of the Big Liar. Yet even *now*, as we flirt with depravity and fascism, who has been willing to look in the cupboard marked “Alternative Facts” and open the box marked “Alternative Votes”? Certainly neither government nor media. They both blanch at the mere thought of “undermining voter confidence in our elections.” And that is precisely what gives computerized election theft such a big leg up. To pull that leg down will require undermining voter confidence in our elections—but is any confidence based on a blind-faith refusal to examine worth protecting?

Because that voter confidence has been so desperately protected, Americans—who no longer trust their leaders, no longer trust the media, and no longer trust each other—paradoxically remain the picture of trust when it comes to one thing: we trust our elections. We are about to head into the most critical set of elections in living memory *continuing* to permit our votes to be counted unobservably and without verification in the partisan, proprietary, pitch-dark of cyberspace and trusting that manifestly corruptible process to deliver the truth—an honest and accurate counting of our votes. What a strange faith to cling to in this Age of Lies and Mistrust!

If we are to survive the Age of Trump and find our way back from the brink of the cliff, it will have to start with replacing that easy faith with serious inquiry—building upon facts and not shrinking, either out of tact or on the sage advice of the marketing department, from calling a spade anything but a spade.

Democracy begins to end when its beneficiaries go lazy and passive, when they are seduced by speed, ease, convenience, entertainment. And that happened Before Trump, and it happened before the “Russians” took an interest in influencing who won our elections. It happened when the U.S. began counting votes in the dark, entrusting that critical process to a handful of private, partisan, secretive outfits, and expecting—in fact with unshakable faith—that it would proceed honestly and accurately.

After all, we figured, we can see why someone would shoot up with PEDs to win the *Tour de France*, but who would *ever* want to steal a U.S. election?

The evidence is plentiful that the Republican (and not just Republican, but increasingly far-right Republican) hegemony at both national and state levels owes its existence—with but-for causality—to the corruption of the electoral process in the computerized vote counting era. And it is that hegemony that is enabling Trump’s romp over the rule of law and into autocracy, though it is not clear from their behavior that the Democrats have much greater interest than do their right-wing counterparts in restoring public sovereignty.

And the media? Well, aren’t they having the time of their lives! Nothing like a horny dragon to slay! But public, observable vote counting, the desperate need for *serious* electoral reform? *No, we don't go there, at least not with the urgency this crisis demands*—because that urgency would derive from consideration of the possibility that the problem is not merely one of hypothetical vulnerability. That remains a bridge too far.

The price for not crossing that bridge is nothing less than all we value. And while I enjoy, in a grim sort of way, the torrents of Trump-disparaging adjectives and adverbs, I really don't see much hope in them. On this, at least, *The New York Times* agrees. Their editorial, from which I quoted at top, is titled “Angry? Go Vote.” And it continues:

“This is a fragile moment for the nation. The integrity of democratic institutions is under assault from without and within, and basic standards of honesty and decency in public life are corroding. If you are horrified at what is happening in Washington and in many states, you can march in the

streets, you can go to town halls and demand more from your representatives, you can share the latest outrageous news on your social media feed—all worthwhile activities. *But none of it matters if you don't go out and vote.*" [emphasis added]

The *Times*, of course, is right. There is *one* official scoreboard and it is known as an *election*. But an election comes down to *vote counting*. And if that remains computerized, privatized, and secret, is there any reason to expect reason to prevail over derangement on the official scoreboards of 2018 and 2020?

We have watched the situation go from perilous to critical to surrealistic (you can follow the progression in my Forewords to the 2014 and 2016 editions). Let's hope it has not gone beyond rescue.

This edition of *CODE RED* updates the latest developments, including of course the 2016 elections and what they have bestowed on America, but also the rise and potential impact on both politics and election integrity of the Parkland students and other sprouts of genuine resistance. It considers the (dim) prospect of effective electoral reform emerging from our conventional political processes. It proposes fresh and outside-the-box solutions, both technical and political, befitting the urgency we confront. And, like the *Bulletin of the Atomic Scientists*, it sets a Doomsday Clock.

The good news is that it's not *quite* midnight. We can turn this country around, but only if we first restore public, observable vote counting to our elections. How does the old adage go? "For want of a nail . . ." It is a simple, basic thing: but until we do it, we will continue putting everything we value at risk.

It would be highly disingenuous were I to pretend to be free of strong convictions about both the policies and personal ethics and behavior of Donald Trump. For better or for worse, the divisions of these years are as passionate as they are polarized, and if credibility is to be gained by masking them, then it is a deceptive credibility. So forgive me if at times I wear my anger on my sleeve.

I can attest, however, that such feelings have not played a part in my presentation of data, analysis, or arguments on behalf of an honest electoral system and a public, observable vote-counting process. The data are the data (the sources are all official postings and/or archives), the analyses are objective (with an open invitation to replicate), and the changes argued for speak to the

foundations and hallmarks of democracy itself and are goals I should think we, as citizens and voters, would all share—however we feel about guns, God, gays, global warming, healthcare, corporations, regulations, immigration, trade or Trump.

There’s an old joke about a guy who jumps off the top of the Empire State Building. Someone with an office on the 42<sup>nd</sup> floor sticks her head out the window and asks how’s he’s doing. “OK, so far!” comes the answer.

If this once applied to America in the computerized voting era, that time is past.

***Jonathan D. Simon***

***May 9, 2018 – Felton, California***

## FOREWORD to ELECTION 2016 EDITION

*The saddest aspect of life right now is that science gathers knowledge faster than society gathers wisdom.*

-- Isaac Asimov

**THIS is still, as it was two years ago, a book for everyone who has been wondering what the hell is happening in America and in American politics.**

And it still tells the story of how America's electoral system has been corrupted in the most direct and fundamental of ways: vote counting, the bedrock protocol of our democracy, has been computerized, outsourced, and made unobservable. In the darkness of cyberspace, common sense and the experts tell us, the vote count is vulnerable to manipulation—hacking by outsiders, rigging by insiders. And the forensic evidence indicates that the vulnerability has been exploited.

**None of this is new. So why a new edition for *CODE RED*?**

Election integrity and security is, as news anchors put it, a *developing story*. The “R-word” is being thrown about by, among others, a major-party presidential nominee. Serious articles in our “newspaper of record” warn of potential foreign interference with the vote counts of American elections. Things are moving, and moving fast.

Whatever one's opinion of Donald Trump as an avatar of electoral integrity, it was only a matter of time before *someone*, whether from a place of fairness or from one of self-interest, called into question a vote counting system that cannot be seen. This emperor has been walking around naked for 15 years now and the real mystery is why it has taken that long for *anyone* to mention the obvious. Nor is Trump the only one speaking publicly of rigging and hacking: the forensically bizarre 2016 primaries triggered such allegations, lawsuits, and a wave of distrust from millions of supporters of the Sanders candidacy.

However you feel about such stirrings, you can sense that the political and electoral environments have undergone a sea change. Our electoral system has failed badly in the translation of public will into electoral outcomes and representative government, and the result has been a rapidly metastasizing politics of disgust and distrust.

Whether and how this may come to a head in November and beyond remains to be seen, but it is hard to imagine a restoration of trust in our elections and our political system without the restoration of an observable vote counting process. The new chapters “**E2014: What Democracy Doesn’t Look Like**” and “**E2016: The Chickens Come Home**” address our recent rapid descent into this hole; “**The Way Forward**” crucially offers a plan of action for digging ourselves out.

We are in a strange and difficult but not entirely a hopeless place. We will have to work to restore our democracy and reclaim our sovereignty—work together with grit and tenacity. It begins with becoming informed, then trusting our common sense, communicating, organizing, moving mountains. The inertias are great but so is the strength of a people acting together to overcome them. We possess that strength and we owe it to ourselves and to the future to find it and use it.

*Jonathan D. Simon*  
*August 19, 2016 – Felton, California*

## FOREWORD to POST-E2014 EDITION

*It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair.*

— *Charles Dickens, A Tale of Two Cities*

**THIS is a book for everyone who has been wondering just what the *hell* is happening in America and why American politics have become so increasingly warped as this new century has unfolded.**

**It is a book for everyone** who has wondered what is behind the gridlock in Washington, and the political hyperpolarization everywhere in America.

**It is a book for everyone** who has been scratching his or her head as election results show voters seeming to be voting against their own interests and contrary to virtually all measurements of their opinions, in the process transforming America into a harsh, mean, and baffling land.

**And it is a book for those who cannot quite believe this is the real America they are seeing—who say to themselves, and increasingly to each other, “There’s something wrong with this picture.”**

This is also a book I’d rather not write, and it is one that I believe most Americans would rather not read. The story it tells is grim and a ‘happy ending’ will depend on an exercise of public will not seen in America within living memory. Yet, if America is to be rescued from the slow-rolling coup that is turning our nation into an unrecognizable place, this book *must* be written and *must* be read, and such an epochal exercise of will *must* rapidly become a reality.

**The grim truth that is so hard to tell and so hard to swallow is that America’s electoral system has been corrupted in the most direct and fundamental of ways: the computers that now count virtually all our votes in secret can be—**

**and, the evidence indicates, *have been*—programmed to cheat.** To override the will of the voters and change the outcome of elections. To steal and hold power that could not be gained and held legitimately. Ultimately to reshape America more effectively than could a junta rolling tanks down Pennsylvania Avenue. The junta would, by its very visibility, at least provoke resistance.

I can only wish it were a fantasy, a fiction, the fevered invention of easy-to-dismiss, get-a-life “conspiracy theorists.” I can’t blame anyone for reflexively wanting to write it off as such, for asking, reasonably, “If this is happening, why aren’t election administrators all over it? If this is happening, why aren’t the losing candidates and/or their party all over it? If this is happening, why isn’t the media all over it?” And I can’t blame some for saying, with great indignation, “America is the world’s Beacon of Democracy—*this is the one thing that could never happen here!*”

To which I can respond only by asking you to set that cherished, comforting, and dangerous vision of Exceptional America aside as we take a hard look at the core danger of computerized vote counting and the evidence that its vulnerability to wholesale fraud is being exploited to alter the very nature and direction of our country against the will of the majority of its people. Yes, it will most likely ruin your day. It will, if you’re anything like me, leave you angry. Beyond angry. And I hope therefore ready to act, and determined to keep acting, until we Americans have our democracy back.

I’ve chosen to present a good part of this book in a Q&A format. I believe it makes things clearer and gets down to brass tacks quicker. There is so much about elections, vote counting, computerization, polling, and media coverage of each of these that is generally unknown or not well understood. Once the questioning process is begun, each question tends to lead to another, until the whole picture seems to take shape. The Q&A precedes an examination of the current state of affairs and an appendix presenting forensic evidence and analyses, and finally an ample bibliography for readers who feel the need to explore further before swinging into action mode.

I am well aware that, much as in the aftermath of the 2008 election (“E2008”), the Obama/Democratic victory in E2012 left the vast majority of potentially skeptical observers believing that *nothing* is rotten in Denmark (if the Right *could* rig, why *wouldn’t* it? and if it *did* rig, why would it *lose*?) and that it’s perfectly safe to go back in the water. We address this tragically misguided belief and answer those perfectly logical questions. We will see that there is nothing safe about the water and that the Denmark of American vote counting is rotten to its unobservable core.

The Big Picture of American politics has become an ugly one and one that will only get uglier with time and inaction. So let's take an unblinking look at what the hell is happening to America and what we still just might be able to do about it.

*Jonathan D. Simon*

*December 21, 2014 – Arlington, Massachusetts*







## INTRODUCTION

*There's something happening here and you don't know what it is,  
do you, Mr. Jones?*

– *Bob Dylan*

Who among us would trust an election where the ballots were handed to a man, dressed in a magician's costume, who took them behind a curtain and emerged sometime later, claiming he had counted and then shredded them, to tell us who won? What if the man were wearing a "So-And-So For President" button or some other partisan signifier? And what if the results of key and close elections—elections that shaped American politics by determining the balance of power in the federal government and statehouses—kept going *that same way*? How many, and what overall pattern of, strange results would it take before we insisted on going behind the curtain with him, or at least sending a trusted representative of our interests, to observe the count?

Nothing should be more self-evident than the simple statement that for an election to have *legitimacy*, the counting process must be *observable*. If the votes are counted in secret "behind a curtain," it does not matter how or by whom, no one other than the counter can really know who won and the results therefore lack legitimacy. *If you do not accept this basic statement, you may as well save yourself the time and put this book down now, because nothing else I have to say will make much of an impression.* Please take a moment, indeed as much time as you need, to think it through and decide for yourself. Would you shrug, say "Ah, what the hell," and simply trust the man behind the curtain with the fate of our nation and, given our nation's position in it, much of the world? Or would you take democracy seriously enough to demand a vote count that could be observed? If so, read on and get ready to roll up your sleeves.

Now let's look at our "real" elections, the ones that determine the leadership and direction of our towns, states, and country. The ones where we rely upon

the media to tell us who won (and why). We have long employed the secret ballot process, and for most of our nation's history an open, public counting process was the norm. Votes cast in private, counted in public. Makes sense.

But that is no longer the case. In 21<sup>st</sup>-century America, aside from a few tiny pockets where ballots are still counted observably in public by humans, vote counting is an entirely secret enterprise, taking place on chips and memory cards concealed inside computers or, worse yet, in servers arrayed along a network, often far distant from where the votes are cast, in the full, impenetrable darkness of cyberspace.

The first alarm sounded by this book is that these elections are in practice no different from the charade of the man in the magician's costume "counting" behind the curtain. Not one of these elections—from presidential to congressional to dog-catcher to ballot-prop—warrants the trust necessary to claim legitimacy. And an electoral system so untrustworthy that it cannot claim legitimacy, whether in a Third-World nation or here in the touted Beacon of Democracy, makes a mockery of the democratic process in which we take such reflexive pride.

Why would a nation install, and why would its people acquiesce in, such a patently untrustworthy process for making its most critical decisions and for transforming the public will into leadership, policy, and direction?

We will return to this question often in the course of this book; it has several disturbing answers. But for the moment we think it fair to observe that we live in a time and a place where *convenience is king*. Every improvement in speed, each yet slicker technological "advance," has been embraced with reflexive zeal. Our cultural impatience ("Faster connection time! Faster downloads! Tweet! Swipe Right!") seems to know no bounds.<sup>1</sup>

After all, isn't it obvious that, as the too-cute kids seated at the table with the friendly corporate suit kept reminding us in that brilliant and ubiquitous (and already ancient) TV ad for the latest happiness-bestowing smartphone, "*faster is better?*" Moreover, we seem to have a collective affinity for that which *looks* sophisticated—sleek, digital, graphic, multi-layered, multi-colored, rapid and impeccable. Isn't a glistening iPad, quite apart from its utility, also a comforting

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<sup>1</sup> Perhaps the only real exception to our pan-cultural haste is our embrace of video review in our various sports (now trickling down even to the high school level). We accept these delays because of the importance we have come to place on accurate athletic outcomes and sports justice—i.e., because "football matters."

symbol to us of how far removed and safe we are from the raw, naked dangers of the pioneer's cabin, the medieval hut, the prehistoric night?

This hi-tech, hi-speed ethos is, of course, not entirely new, but the grip that speed, convenience, and sit-back-and-enjoy-the-show choreographed entertainment now hold on our culture is tight and getting tighter every minute. "Progress," so defined, has become a *habit* and appears to be inexorable. Thus when it comes to elections, there is, in effect, a mandate that virtually every one be decided within hours, if not minutes, of poll closing, and that, in our major biennial elections, the direction that America will be taking be brilliantly and artistically laid out in a mélange of pie-charts, blue and red blinking states, and punditory consensus, all before it is time for bed. This is such a *fait accompli*, such a *ritual*, that it is hard to remember that it wasn't *always* this way and, when it comes right down to it, isn't necessary—much less to contemplate the price paid for our convenient and entertaining experience.

*The price is simply that we as citizens now have no basis for trusting it.*

Behind this festive TV extravaganza—reassuringly presented as "Decision 20XX"—are those vote-counting computers and computer networks, *not one of which is one iota different from the magician behind the curtain*, a faith-based enterprise where votes are counted in secret and results announced (and accepted) with the straightest of straight faces. In fact, it is as a prop to this media production and its programmed primetime-slot narrative that the vote counting computers are deemed "indispensable."

How long this irrational situation has been going on is open to question. Computers in one form or another (initially mainframes using punch cards) have been employed in vote counting since as early as the 1960s, and there is some evidence that they were sporadically being used to manipulate electoral results almost from their first deployment. So even in the "good old days" when the nation watched the vote count numbers rolling up behind such trusted icons as Walter Cronkite or David Brinkley, it did so without any real assurance that there wasn't a thumb (or two or ten) on a scale somewhere in the pipeline where computers could be programmed to add, delete, or shift votes.<sup>2</sup>

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<sup>2</sup> See Collier J, Collier K: *Votescam: The Stealing of America*, Victoria House Press 1992, at <http://www.amazon.com/dp/0963416308>, for the history of electoral

What has happened since then, however, is that with rapidly advancing technology it has become *infinitely easier* to alter far more election results, with far greater effect, efficiency and precision, and far less risk of exposure. What was once highly labor-intensive, requiring a good-sized crew to hack punch cards or cover up falsified lever machine check-sheets machine by machine in a single contest, can now easily be accomplished by a single insider or hacker, even one working from outside our borders anywhere in the world. A single individual—especially one with insider access—can change the results of dozens, indeed hundreds of elections, with virtually no risk of detection. With the help of a tiny staff, such an individual can essentially stage an undetectable rolling coup. The system is *that* vulnerable, a piece of red meat lying unguarded in a yard full of salivating dogs.

Too dramatic? Too purple? Study after study, by the most prestigious researchers and institutions, tells us that we can be sure about the red meat, the vulnerability.<sup>3</sup> But is it paranoid to imagine the *dogs*, hungry and willing to exploit it? In other words, given the opportunity, who would *want* or *dare* to steal an election, or a nation, that was lying unguarded in the yard? Who would set their sights so high and sink so low?

To answer this, we need first to make a quick sketch of our era, and the ethics of our time. Author David Callahan has done some of this work for us. In his 2004 best-seller *The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead*,<sup>4</sup> Callahan is hard-pressed to find a nook of competitive endeavor where cheating or rigging to achieve some goal has not become commonplace. From students, to job applicants, to athletes at every level, to financiers, to corporations, to public officials—Callahan takes us on a grand tour of what has

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manipulation and its cover-up in the early computer age, before the passage of the Help America Vote Act opened the floodgates in 2002.

<sup>3</sup> See, e.g., [http://brennancenter.org/dynamic/subpages/download\\_file\\_39288.pdf](http://brennancenter.org/dynamic/subpages/download_file_39288.pdf), <https://www.princeton.edu/news/2006/09/13/researchers-reveal-extremely-serious-vulnerabilities-e-voting-machines-0>, <http://www.blackboxvoting.org/BBVtsxstudy.pdf>, <http://www.blackboxvoting.org/BBVreport.pdf>, <https://oversight.house.gov/wp-content/uploads/2017/11/Blaze-UPenn-Statement-Voting-Machines-11-29.pdf>, <http://www.gao.gov/new.items/d05956.pdf>. It is of interest that the comprehensive reviews undertaken by the states of California and Ohio have been removed from the official websites and are no longer available to the public.

<sup>4</sup> Callahan D: *The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead*. New York: Harcourt, 2004. See also, Michael Lewis, “Extreme Wealth Is Bad for Everyone—Especially The Wealthy,” *The New Republic*, 11/12/2014 (reviewing West D: *Billionaires: Reflections On the Upper Crust*. Brookings, 2014), in which copious research is presented showing the propensity to cheat to be correlated with increasing wealth.

been happening where and when no one is looking in today's 'just win, baby' America.

It is not pretty.

And at every turn the vast majority of us have been, at least initially, very reluctant to believe the extent of the rot, the malignancy of the tumor. It would seem that a painful cognitive dissonance with ingrained beliefs in human perfectibility, historical semper-improvement, and American exceptionalism has contributed to our collective naivety.

When 500-foot home runs were flying off the bats of Mark McGwire and Sammy Sosa, we desperately wanted to believe that healthier diets and better workout regimens could account for it. Few were willing to give any credence to former major-leaguer Jose Canseco's claim that these new supermen were juiced.<sup>5</sup> Something did seem wrong with that picture—as something seemed wrong with Bernie Madoff's Ponzi scheme, with credit default swaps, with the anthrax in the vial at the U.N. and the supposed WMD's in Iraq—but it was not something that as a culture we were willing to acknowledge. All that taint was just too much to face, *until we were forced to*. Until we were *made* to look hard at how our high stakes "games"—from Wrigley Field to Wall Street to the White House—were actually being played.

The question we are compelled to ask—by all that once was holy; by Major League Baseball and the Tour de France; by the state-doped stable of Russian Olympians; by Bernie Madoff and Lance Armstrong and A-Rod; by the signaling cheaters exposed at the top of the impeccably-mannered contract *bridge* world;<sup>6</sup> by the ring of computer hackers charged with the theft and use of 160 million credit card numbers from the likes of Citibank and NASDAQ;<sup>7</sup> by the

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<sup>5</sup> Canseco J: *Juiced: Wild Times, Rampant 'Roids, Smash Hits, and How Baseball Got Big*. New York: William Morrow & Co., 2005. *Publishers Weekly*, in describing *Juiced* as "poorly written, controversial," was typical in doubting whether Canseco "really knows anything about the problem beyond his own use." Canseco's next book, written three years later when events and investigations had borne him out, was entitled *Vindicated: Big Names, Big Liars, and The Battle to Save Baseball*.

<sup>6</sup> See <http://www.newsweek.com/big-rich-cheaters-bridge-world-rocked-top-players-busted-375414>.

<sup>7</sup> See <http://www.bbc.com/news/technology-23448639>. One of the ring's members, Mikhail Rytikov, was charged with having the sole role of covering up the ring's tracks. By 2018 such massive cybercrimes have become rather ho-hum, barely generating headlines. Among them the Equifax breach, the Uber breach, and the attempted hacking of what appears to be a good part of the U.S. national voter database.

fraudsters at Volkswagen who programmed the computers in their cars to cheat on emissions tests, got turned in by a whistleblower, and have agreed to pay \$14.7 billion in settlement to U.S. consumers alone;<sup>8</sup> by the apparent foreign-state cyber-incursion manifest in the “Sony” hack and of course the “DNC” hack of 2016;<sup>9</sup> by Equifax hack and the plethora of hacking and rigging schemes that are now accepted as commonplace—is how a computerized U.S. election, vital and vulnerable as it is, could *not* be a target for skullduggery?

*Are the stakes anywhere in any endeavor in the entire world ever higher than in a biennial American election?* We know of no pot of gold—home runs, capital, fame, power, policy—that can compare to that at stake in American elections.<sup>10</sup> Winning elections confers the power to reward friends and punish enemies, along with the opportunity to set policies that can engender enormous profits. But, just as dogs of many different breeds might find the unguarded hunk of beef irresistible, so those moved to rig elections may be of different breeds and driven by different hungers. Besides the obvious yearning for practical power and profit, there is the “true belief” of the political extremist and, at the other end of the spectrum entirely, the climb-Everest-because-it’s-there lure for the conscienceless “pure player,” one who, not necessarily in the service of any heart-felt conviction but just for the “rush” (and of course the money), would be the human god, the Master of the Dance who from an unseen perch alters politics on the grandest scale—and with it the course of history.<sup>11</sup>

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<sup>8</sup> See <http://www.nytimes.com/2016/06/28/business/volkswagen-settlement-diesel-scandal.html>.

<sup>9</sup> As Ajay Arora, CEO of cybersecurity firm Vera, put it in warning that the DNC hack might be the new normal: “This is a bellwether of things to come. The techniques are advancing. There are strategic attacks, and then there is tactical warfare. There are parties out there now thinking, ‘hey, let’s affect outcome of whole election.’” (<http://www.aol.com/article/2016/07/26/the-worst-might-be-yet-to-come-with-the-dnc-email-hack/21439542/>). Presumably those “parties out there” have grasped that “whole election” includes the part where the votes are counted.

<sup>10</sup> Although it is hardly possible to quantify the “net worth” of an election, it bears mention that more than \$7 billion was spent to win federal office alone in E2012 (<http://www.politico.com/story/2013/01/7-billion-spent-on-2012-campaign-fec-says-87051.html>), and, with “dark money” taken into account, E2014 was by far the most expensive midterm election in American history. With lobbyists enjoying a “return on investment” rate of better than 100-to-1, it is not hard to see that, even calculated in cold monetary terms, the value of an election—which of course is concentrated in the relatively few key contests that determine control of the governmental apparatus at various levels—is astronomical.

<sup>11</sup> To the short-list of actors with a vital gaming interest in the outcome of a given U.S. national election, we can add macro traders. Macro traders make (and lose) fortunes by

Some true-believers—who now abound in American politics, have made a successful bid for control of the Republican Party, and (as we shall see) dominate the upper echelons of the voting computer industry—are so strongly motivated and inspired by an outcome vision (whether fundamentally religious or secular in nature) that they can thoroughly rationalize an ends-justify-the-means approach to their activities. From the standpoint of such a true-believer, there *are* no ethics as compelling as that true belief. And from the standpoint of a pure player, there are no ethics, period: *if you ain't cheatin', you ain't tryin'.*

Thus an individual or group might feel justified in, say, sending “Vote Wednesday” informational flyers or making “Vote Wednesday” robocalls to the homes of opposing voters when the election is Tuesday. In fact they *have*, repeatedly.<sup>12</sup> Is there a bright line, we must ask, between behavior so blatantly unethical and, say, a more efficient gambit—simply offsetting the zero-counters on the memory cards of voting computers to +X for the candidate you favor and -X for the candidate you oppose, so that at the end of the day (as explained in the next chapter) the vote totals will reconcile with the poll tapes recording the number of voters, the election administrator will see and certify a “clean” election, and you will have stolen a net of 2X votes per machine so rigged? Indeed, it would be hard to resist if you were a “Vote Wednesday” kind of true-believer who had a pipeline to those memory cards, or to the cyber-networks on which millions of votes are now “processed.” And just another day on Mt. Everest for a pure player.

Consider democracy schematically as a combination of process, method, and outcome. The core *process* is the casting and counting of votes—whether by the thousands or tens of millions. The *method* consists of all the various means to influence the casting of those votes—campaigning, broadly understood: strategizing, raising and spending money, telling truths and lies in the rough and tumble of the eternal political battle. The *outcome* is victory or defeat in each contest and ultimately, when those contests are summed, *power*. In

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keeping their fingers on global, regional, or national economic and political pulses. The fate of a macro trader's billion-dollar bet to go long or short on a currency or commodity has been known to come down to who wins a single election (see, e.g., the ruinous impact of a Brazilian presidential election result on one such trader: <https://www.newyorker.com/magazine/2018/04/16/a-sidelined-wall-street-legend-bets-on-bitcoin>). With literally billions immediately at stake for such a trader, his or her firm and clients, the ROI for the services of an election hacker or insider would be, to say the least, dangerously lucrative—and the loss of such a bet dangerously catastrophic.

<sup>12</sup> See <http://www.motherjones.com/politics/2012/11/election-dirty-tricks> for a record of this and other dirty tricks recently relied upon to gain electoral advantage.

theory the process is sacrosanct, the method roughly bounded, the outcomes legitimate and accepted.

But imagine an actor—and world and U.S. history have seen many such—for whom the outcome takes on a compelling priority over all respect for process. Might not such an operative address his method not just to influencing the *casting* of votes but to influencing the *counting* of those votes? In such a compulsively outcome-driven view, what cannot be achieved by campaigning might well be achieved—more directly, in fact—by manipulating the counting process where the opportunity presented itself. The more so once politics itself evolves, some would say degenerates, into the equivalent of total war—the ethos that characterizes the Age of Trump, but that has been building throughout the computerized voting era.

Considering this we must ask a hard question: Lip-service aside, just how sacred *are* elections and just how sacrosanct *is* the counting of the votes?<sup>13</sup> And a follow-up: How does the democratic process *per se* stack up against a burning true belief or a boatload of money? Is it possible that, for some, “democracy”—no longer a majestic and awe-inspiring novelty—is just another *impediment* to be dealt with, something old and in the way on the path to power or reward? Just how deep and abiding a respect for democracy itself, how much pure *principle*, would it take to overcome the tremendous temptation to palm a card or two and *have things your way*, alter the course of history, and create (as George W. Bush was once praised for doing) your own reality?<sup>14</sup>

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<sup>13</sup> Because a major election is virtually *never* decided by a single vote, the value we place upon a single vote *in actuality* tends to be a good deal lower than our exalted rhetoric would have it. It may be that this low pragmatic value assigned the individual vote in turn colors our laissez-faire attitude toward the voting and vote-counting process as a whole.

<sup>14</sup> There is a chilling and revealing testament to none other than Karl Rove’s fervent embrace of this approach to political action, as captured in an October 17, 2004 article written by Ron Suskind for *The New York Times Magazine*, as part of which Suskind interviews the at-the-time anonymous Rove:

The aide [subsequently identified as Rove] said that guys like me were “in what we call the reality-based community,” which he defined as people who “believe that solutions emerge from your judicious study of discernible reality. . . . *That’s not the way the world really works anymore,*” he continued. “We’re an empire now, and *when we act, we create our own reality.* And while you’re studying that reality—judiciously, as you will—we’ll act again, creating other new realities, which you can study too, and that’s how things will sort out. *We’re history’s actors . . . and you, all of you, will be left to just study what we do.*” [emphases added]

Now, in the Age of Trump, the “reality creation” that once seemed novel has—in the hands of such practitioners as *Breitbart News*, Kellyanne Conway, Sarah Huckabee Sanders, and of course the president himself—become standard operating procedure.

Having made a realistic appraisal of the behavior, mindset, and character of some of these political actors and operatives now on the scene,<sup>15</sup> do we really believe that a deep and abiding respect vests in every player in the game of “democracy” as it is currently being played in The New American Century?

Even before Trump arrived on the scene, many observers had begun to question, and often deplore, the “new madness” of American politics.<sup>16</sup> Taking in the hyperpolarization, the intransigent hyper-radicalism of the Right and what seems to be its poll- and explanation-defying endorsement at the ballot box by a traditionally moderate electorate, many wondered what was happening in and to America. Witness Thomas Mann’s and Norman Ornstein’s 2012 bestseller, *It’s Even Worse Than It Looks*.<sup>17</sup> Many explanations were offered up, from clever messaging to voter suppression and gerrymandering to the role of dark money. Pundits, after all, are not paid to be stumped. But there remained a nagging disquiet, a sense that all these explanations didn’t quite explain enough.

Now in the Age of Trump, these same pundits are tying themselves in knots trying to explain the inexplicable, fathom the unimaginable, while most Americans seem to be walking around in a state of it-does-not-compute bewilderment. Something is happening that defies not only conventional political wisdom but plain old common sense, as if the Political Universe had been taken over by some new asymmetrical non-Euclidean geometry. There seems to be a missing force, an X-factor analogous to cosmic dark matter or dark energy, that is needed to explain what is happening to America.

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<sup>15</sup> And adding, with a nod to the likely perpetrators of the 2016 DNC and voter database hacks, states and political actors and operatives anywhere in the world who might have more than a rooting interest in American electoral outcomes.

<sup>16</sup> See, e.g., *New York Review of Books*, 9/27/2012, cover headline: “OUR WEIRD POLITICS NOW,” featuring separate pieces on the theme by Andrew Hacker, Ezra Klein, Jacob Hacker, and Paul Pierson.

<sup>17</sup> Mann TE, Ornstein NJ: *It’s Even Worse Than It Looks: How The American Constitutional System Collided with The New Politics of Extremism*. New York: Basic Books, 2012, <https://www.amazon.com/dp/0465096204/ref>.

We will present compelling evidence that the X-factor has been the electronic manipulation of votecounts and that, all other factors notwithstanding, what is happening here in America would *not* be happening in its absence.

For anyone persuaded by the evidence, presented in the chapters that follow,<sup>18</sup> that the electoral process in America has been subverted, or even that it is merely vulnerable to and perhaps teetering on the brink of such subversion, our predicament takes on a nightmarish quality—one of those dreadful dreams where you are running without moving while the locomotive speeds on to its inexorable impact with the child who has wandered onto the tracks.

Virtually everything about the situation is surrealistic and absurd. Election integrity activists are told to produce “a smoking gun,” when all such “hard evidence” materials are strictly off-limits to investigation; statistical evidence, no matter how copious and consistent, is dismissed with a shrug; reform proposals such as hand-counted paper ballots for federal and statewide elections are shot down as ludicrous Luddite nonstarters; “rogue” journalists and whistleblowers are cowed, exiled, silenced, or ignored. America seems hell-bent on sticking with its faith-based election system, no matter how vulnerable it is shown to be and no matter how weirdly distorted our politics become.

And yet . . . and yet, America is one examined memory card (however obtained), one white-hat real-time election hack (“Mickey Mouse gets 4 billion votes!”), one open and honest recount, one “Opscan Party” (where citizens form a ring around an optical scanner and call for a public, observable count of the voter-marked ballots within), or even one serious article in *The New York Times* or *The Washington Post* away from *critical mass*, from the sudden explosive recognition that something thought too ghastly to imagine (even *worse* than the idea that *baseball* was not the wholesome Norman Rockwell game it seemed) will *have* to be imagined and then dealt with.

Given how unimposing the civic duty of public, observable vote counting is in actuality,<sup>19</sup> the problem can be *dealt with* easily enough. The real challenge is

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<sup>18</sup> Election forensics is not, for better or worse, the stuff of soundbites; but neither does it have to be eye-glazingly abstruse and obscure. I have sought to balance comprehensiveness with clarity and have provided links and references for additional exploration as appropriate.

<sup>19</sup> It has been calculated that hand counting the federal and statewide races would require a *maximum of four hours per lifetime from each American voter*, a civic burden far less onerous than jury duty, one that Americans of previous generations assumed

not in the dealing with, but in the collective imagining—and the willingness to think seriously and rationally about the situation.

There are some indications that the American *people* at least—after a more than generation-long embrace of the private, and rejection of the public, sphere—are ready once again to invest in the common good, and perhaps even to part with a few of the expedients and conveniences that are now being seen to do us individual and collective ill.<sup>20</sup> There is an emerging, priority-reordering, “anti-seduction” culture that could come to support a demand for reform of our voting system and could be mobilized to let our representatives know that we are ready to serve and determined to defend our democracy. And of course, in the Age of Trump, there’s a renewed sense among millions that politics and elections *really matter*—a great awakening to what is at stake.

Yet there continues to be a great reluctance to connect what is happening to our nation politically with the vagaries and vulnerabilities of our computerized vote counting processes. Realistically, *absent a galvanizing catastrophe or a complete media about-face*, there have been few signs that such reforms as hand counting or even effective auditing are in the offing.

It is one thing to bewail a shocking political reality, or even to vaguely question a particular president’s legitimacy, and another thing entirely to insist upon the concrete reforms necessary to prevent the serial recurrence of fraudulent elections. In this appalling lack of traction, vote counting reform is not alone: think gun safety, climate change. *At least as now represented by our elected leaders*, we are a conservative nation, reactive rather than pro-active, simultaneously smug and insecure, paradoxically hubristic yet with a fragile self-esteem giving rise to much denial.

It does not have to be this way. The Dutch took one whiff of *our* 2016 elections and promptly decided to count *their* critical 2017 national election by hand. So did the Norwegians. Here in the Beacon of Democracy—as we rest on our wilted laurels, on guard as always against *external* enemies—it is now

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and one that Canadians, Germans, and Australians, among others, perform today. A uniform, public, observable, Election Night audit process—as proposed in Chapter VII, Study VIII—for *all* contests would make about the same modest demand.

<sup>20</sup> Apart from the bevy of books and blogs blasting Walmart culture and its corporate-serving anomies, we can look around us and see the regrowth of participatory communal foci such as farmers’ markets and food co-ops. While alienation, speed, convenience, and self-interest clearly remain the dominant cultural modes, it appears that a turning point may finally be in sight.

permitted to talk of “Russian meddling.” We are assured, though, by such watchdogs as our Department of Homeland Security that—after deciding *not* to examine a single memory card, string of code, or voter-marked paper ballot—they have determined that “no actual votes were affected” by such “meddling.”<sup>21</sup> What cannot enter our national discourse, cannot thus far be debated or explored, is the possibility that, as Pogo once said, “we have met the enemy and he is us.” Meaning simply that the “meddling” is far more likely to be undertaken by *domestic* actors with ties to the vendors and programmers—insiders with keys to the front door—than by foreign hackers who have to break in through a window.<sup>22</sup>

If, in one way or another, a massive electoral theft *were* exposed beyond all cover-up and forced upon the public consciousness, it would of course be technically and pragmatically possible to quickly restore hand counting or at least a comprehensive and effective auditing protocol. Neither is beyond our capacities—hell, did we or did we not put a man on the Moon?—and both cost a tiny fraction of what we have recently spent bringing “democracy” to foreign soils.<sup>23</sup>

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<sup>21</sup> See <http://talkingpointsmemo.com/muckraker/dhs-doesnt-want-to-know-about-vote-hacks>.

<sup>22</sup> Consider this extraordinary 2016 revelation by Roger Stone—the insider’s insider, long-time Trump advisor, veteran of Republican campaigns dating to the Nixon years, and *New York Times* best-selling author—at <http://thehill.com/blogs/pundits-blog/presidential-campaign/291534-can-the-2016-election-be-rigged-you-bet>:

“Both parties have engaged in voting machine manipulation. Nowhere in the country has this been more true than Wisconsin, where there are strong indications that Scott Walker and the Reince Priebus machine rigged as many as five elections including the defeat of a Walker recall election. . . . The computerized voting machines can be hacked and rigged and after the experience of Bernie Sanders there is no reason to believe they won’t be.”

Out of the mouths of operatives. Is anyone listening?

<sup>23</sup> It is perhaps worth recalling here that our wars in Iraq and Afghanistan will end up costing the United States a total of about \$5 trillion (see <http://time.com/3651697/afghanistan-war-cost>), an *average* of nearly \$7 billion *every week* ([www.costofwar.com](http://www.costofwar.com)) since their inception. A *single month* worth of those wars would pay (at \$20/hour per counter) for hand counting our *American* ballots for a minimum of 45 biennial election cycles, or fully *three generations*.

Why, it must be asked, can’t we do this? Why, for that matter, is our computerized voting equipment, in addition to being so corruptible, also aged into obsolescence and dysfunction? Why are we so lavish with our *global* democracy-promotion follies and so ridiculously, and it would appear intentionally, cheap with our *own* democracy?

Whether it would be *politically* possible would remain to be seen. When majority control at critical levels is held by those who have achieved that control as the beneficiaries of years of systemic fraud, can they be expected to willingly institute honest elections and so inevitably surrender power and go gentle into that good night? And, apart from that particular Catch-22, what would motivate a majority of elected officeholders, independent of party affiliation, who asked themselves quite reasonably, “Why mess with a system that has worked for *me* by putting me in office?”

What form and intensity of public pressure would it take to move our successfully elected lawmakers and officeholders? Would marches and sit-ins and massive demonstrations persuade our leaders to restore our sovereignty or would these—when push came to shove—rather be ruthlessly suppressed in the name of security and domestic tranquility? Would it come down to voting boycotts, mass economic actions, or general strikes? Would the simmering subliminal battle between the newly awakened public and its newly exposed oppressors come shockingly to a turbulent and violent head?

It is grim to speculate on these scenarios. *But I think it is fair to say that the later in the game this critical mass of public awareness and outrage is reached, the less likely that an ordinary political remedy will be possible.* So the first thing to be done is to engender awareness, and that right soon. Thus the urgency of this writing. It is a CODE RED.

I’d like to think this story will have a happy ending, that history will review in appreciative terms the struggle of a few activists—Cassandras really—to prod leaders and public alike to scale the towering Never-Happen-Here Wall of Denial so that they can then act together to restore the essential process of observable vote counting to our nation. Most truths eventually come out. All we can do is keep trying in every way possible to help this one find its way into the light.

We will, in the series of questions and answers to follow, examine computerized election theft from many angles. We will explore motive, means, opportunity, and, of course, the evidence for such a ghastly criminal enterprise. We will also explore why it continues to remain hidden, the quintessential Big Lie quietly corrupting our nation and its democracy. We will look unblinkingly at democracy down and ask realistically whether there is any chance that it can get back up. We will ask you to override the powerful “naaaah” reflex and be

among the first to scale with us that towering Never-Happen-Here Wall of Denial.

It will be a rough ride we are taking. For ourselves, our children, and the life that shares the Earth with us, it will be a lot rougher if we choose not to take it.

## QUESTIONS AND ANSWERS

*In searching out the truth, be ready for the unexpected, for it is difficult to find and puzzling when you find it.*

— *Heraclitus*

**Q: In 100 words or so, tell me what you believe is happening with American elections.**

A: Computerized vote counting has opened the door wide, over the past 15 years, to the prospect of systemic fraud and election theft. Virtually all the vote counting equipment is produced and programmed by a few corporations with partisan ties. There is strong and consistent forensic evidence that vote counts are being shifted, altering key election outcomes. Mystifyingly, political intransigence and seeming miscalculation are being electorally rewarded rather than punished. As a result, even as the pendulum *appears* to swing, American politics has veered inexorably and inexplicably to the right. This amounts to a rolling coup that is transforming America while disenfranchising an unsuspecting public.

**Q. Haven't there always been attempts to steal elections? Why is now any different?**

A: Yes, political history is full of skullduggery. But, as IT expert Chuck Herrin memorably put it, "It takes a long time to change 10,000 votes by hand. It takes three seconds to change them in a computer."<sup>1</sup> What computerized elections have brought us, along with speed and convenience, is the opportunity to alter electoral outcomes strategically, surgically, systemically, and covertly. And,

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<sup>1</sup> Herrin, a Republican, was interviewed in Dorothy Fadiman's 2008 documentary *Stealing America: Vote by Vote*, <http://www.stealingamericathemovie.org/>. He concluded, "I think the most appropriate technology is what we should be going for, instead of the latest and greatest."

because of selective access stemming from partisan control over the equipment itself, it is not equal-opportunity rigging—the evidence has shown that it virtually always goes in the same direction.

The “retail” fraud of the past—schemes like stuffing the ballot box in local fiefdoms—tended to wind up a net wash overall and over time, as it was a game open to both sides in their respective strongholds. The “wholesale” fraud of computerized rigging is a far more potent and incomparably more dangerous phenomenon.

**Q: How do you *know* the computers on which we vote are so susceptible to fraud?**

A: There is virtual unanimity among the experts who have studied electronic voting that insiders or hackers can change the results of elections without leaving a trace—at least not the kind of trace that any election administrator is likely to find. These studies have come from institutions such as Johns Hopkins, Princeton, the University of Michigan, The Brennan Center for Social Justice at NYU, the states of California and Ohio, and even the U.S. Government Accountability Office.<sup>2</sup> White-hat hackers such as Harri Hursti and Alex Halderman have demonstrated how quick and easy it is to swap or reprogram memory cards in voting machines (inserting cards with malicious code) or break into the networked vote-counting computers increasingly in use.<sup>3</sup>

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<sup>2</sup> See, e.g., California Secretary of State: *Top to Bottom Review (TTBR) of Voting Systems*, <http://www.sos.ca.gov/elections/voting-systems/oversight/top-bottom-review/>; Feldman A J, Halderman J A, Felten E W: *Security Analysis of the Diebold AccuVote-TS Voting Machine*; Princeton University, Center for Information Technology Policy and Dept. of Computer Science, Woodrow Wilson School of Public and International Affairs, September 13, 2006, [https://www.acm.org/binaries/content/assets/public-policy/usacm/e-voting/reports-and-white-papers/ts06\\_evt.pdf](https://www.acm.org/binaries/content/assets/public-policy/usacm/e-voting/reports-and-white-papers/ts06_evt.pdf); Ohio Secretary of State: *Project EVEREST (Evaluation and Validation of Election Related Equipment, Standards and Testing)*, <https://votingmachines.procon.org/sourcefiles/Everest.pdf>; Hursti H: *Security Alert: Critical Security Issues with Diebold Optical Scan Design, Black Box Voting*, July 4, 2005, <http://blackboxvoting.org/BBVreport.pdf>.

For a more recent overview, see Sue Halpern, “America Continues to Ignore the Risks of Election Hacking”; *The New Yorker*, 4/18/2018, at <https://www.newyorker.com/news/news-desk/america-continues-to-ignore-the-risks-of-election-hacking>.

<sup>3</sup> The “Hursti Hack” was demonstrated in the 2006 film *Hacking Democracy*, Simon Ardizzone director, <http://www.hackingdemocracy.com>.

Halderman, a professor of engineering and computer science at the University of Michigan, was invited, on three days’ notice, to attempt to penetrate the security of the new Washington D.C. internet-based voting system; within 36 hours of the D.C.

The level of security of all this equipment is orders of magnitude *below* that found at major banks, corporations, and governmental institutions,<sup>4</sup> and yet all those *high-security* enterprises have been hacked and compromised repeatedly over the past several years, with increasing frequency.<sup>5</sup> How much *easier* when the “hacker” is working from the *inside* or has been let in the door by someone who lives in the house.

*Why*, on what basis; *why*, by what logic; *why*, according to what understanding of human nature; *why*, from what view of history, politics, and the way high-stakes games are played by those high-rollers for whom, in Vince Lombardi’s words, winning is the *only* thing; *why*, *why*, *why* do we collectively and so blithely *assume* that hundreds of millions of votes counted in secret, on partisan-produced and -controlled equipment, will be counted honestly and that the public trust will be honored to the exclusion of any private agenda, however compelling?!

Why and how, in the face of this level of *risk*, can we just rest easy that all is going well and fairly in the depths of cyberspace where our choices have become 1s and 0s dancing by the trillions in the dark? That dance is the embodiment of our sovereignty. It is from that dance that our future emerges

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system’s launch, Halderman and a group of three student assistants had not only penetrated the system’s security, but had gained “almost total control of the server software, including the ability to change votes and reveal voters’ secret ballots;” they also found evidence of other attempts to breach the system’s security originating from IP addresses in China, India, and Iran. See <https://jhalderm.com/pub/papers/dcvoting-fc12.pdf>.

<sup>4</sup> This was demonstrated definitively and dramatically in the summer of 2017 at the annual DefCon convention in Las Vegas. The organizers set up what they called an ‘election hacking village’ supplied with election equipment, and let the hackers have at it. Not one voting machine was able to prevent its hacker(s) from getting in (some physically, some remotely), and accessing and altering its code—some within minutes. The stunning (to everyone except election integrity advocates) results made national news and had immediate influence in some quarters, with Virginia most notably citing the DefCon revelations as its main reason for quickly scrapping its paperless touchscreen voting in time for its November 2017 statewide election. See <https://www.forbes.com/sites/thomasbrewster/2017/07/29/def-con-hacking-election-voting-machines/#5a12bc321d55> and [https://www.theregister.co.uk/2017/07/29/us\\_voting\\_machines\\_hacking/](https://www.theregister.co.uk/2017/07/29/us_voting_machines_hacking/).

<sup>5</sup> See, e.g., <http://www.wired.com/threatlevel/2012/02/anonymous-friday-attacks/>; also <http://about.bloomberglaw.com/legal-news/5-hackers-charged-in-largest-data-breach-scheme-in-u-s/>; and <http://www.informationisbeautiful.net/visualizations/worlds-biggest-data-breaches-hacks/>.

and whoever programs the computers can, if so inclined, call the dance. *Setting aside for a moment all evidence of fraud*, how can we possibly be OK with *that*?

**Q: If you wanted to alter the outcome of an election, give me an example of how you might do it?**

A: It depends upon the type of computer, but there are many ways to manipulate votes. One very basic scheme, where optical scanning voting computers (“opscans”) are in use,<sup>6</sup> would be to set the “zero counters” on the memory card in each machine to, say, +100 for the candidate you want to win and -100 for the one marked for defeat.<sup>7</sup> At the end of the day the positive and negative offsets are a wash, so the total of ballots recorded by the opscan matches the total of voters signing the log books, the election officials are satisfied that the election was “clean,” *and you have shifted a net of 200 votes on each machine so rigged*, PDQ.

This takes just a few lines of programming out of the hundreds of thousands of lines of code on the memory card.<sup>8</sup> It would be detectable only by a very painstaking examination of the card and its code, but the cards are regarded as *strictly corporate property*, completely off-limits to public inspection; in fact, not even election administrators are allowed to look. The command to alter the zero counters can of course be written not to take effect until actual vote counting begins on Election Day so that the opscans pass any pre-testing that election administrators might perform, and it can also be written in self-deleting code so that literally no post-election trace remains.

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<sup>6</sup> Opscans—which use sophisticated spatial programming to scan, and record as votes, marks made by voters on paper ballots—counted approximately 56% of the ballots nationwide in 2012, a percentage that had risen to above 60% by 2016 and continues to rise as election administrators turn away from touchscreen voting, see <http://www.pewresearch.org/fact-tank/2016/11/08/on-election-day-most-voters-use-electronic-or-optical-scan-ballots/>.

<sup>7</sup> The “zero counter” refers to the number assigned to the first vote recorded for a given candidate or proposition; i.e., where the count begins. Logically that number is “1” and if you were counting ballots by hand “zero” would be the bare table. But in a computer there *is* no fixed starting point known as “zero.” A single line of code can be inserted into the 500,000+ lines already on the memory card to start a candidate’s count at *any* number, positive or negative.

<sup>8</sup> The memory card, which both controls how the computer “reads” the ballots and tallies the votes cast, is produced in such a way that code containing the rig can easily, in fact automatically, be replicated onto however many cards necessary to shift the total number of votes projected as required to alter a targeted contest’s outcome. It is worth noting that the “factory” computers used to program these memory cards are themselves as a general rule connected to the internet.

None of this is difficult or beyond the skills of even a high school-level programmer. Nor, for that matter, are rigs that instead work by shifting every  $n^{\text{th}}$  vote or simply capping one candidate's vote total and assigning all subsequent votes to her opponent. And, since opscans are programmed to "read" the marks voters make on ballots "geographically," it is easy enough to alter the code in the ballot definition files to flip votes by reading the area for Candidate A as a Candidate B vote, and vice versa,<sup>9</sup> or to be more or less sensitive to inevitable stray marks on the ballot, so as to selectively void more ballots in precincts known to be strongholds of the candidate(s) targeted for defeat.<sup>10</sup>

Where "touchscreen" (also known as Direct Recording Electronic or "DRE") computers are in use, their programming can be altered to cause the screen button pushed for "A" to record instead a vote for "B." DREs that print out a "receipt" for the voter to "verify" (the vaunted "paper trail") are of little help, as it is a trivial step to program the DRE to print a vote for "A" on the receipt while recording a vote for "B" in its cumulative count. While such a rig would lead to a disparity between the paper trail and the machine count, uncovering that mismatch would require a hand count of the paper-trail and the reality is that both the voter-marked ballots deposited into opscans and the "receipts" generated by paper-trail DREs are off-limits to public inspection and virtually never see the light of day, no matter how suspect an election's results.<sup>11</sup>

Where the voting equipment is networkable (that is, as is often the case, equipped with a modem), votes can be added, deleted, and shifted *at will, as needed, in real time* on Election Night. Millions of votes are sent through IP networks off-site and often out-of-state for "processing." This saves manipulators from having to guess in advance how many votes they will need

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<sup>9</sup> It is also possible to expand or contract the area in which the memory card directs the scanner to "look" for the voter's mark. This more sophisticated rig can subtly but, in the aggregate, fairly predictably alter vote totals by "seeing" imperfect and off-center marks for Candidate A, while missing them for Candidate B.

<sup>10</sup> Because memory cards must be precisely tailored for the particular ballot, down to the local level, each card is specifically earmarked for use in a given precinct (in other words, they are not generic). The destination of a memory card must therefore be known to its programmer, generally a corporate entity. Knowing the card's destination permits manipulations that are dependent on the political or racial nature of such destinations.

<sup>11</sup> An additional impediment in the case of "paper trail" DREs is the propensity of the paper rolls to jam, smear, and run out, such that a full trail is rarely if ever available for post-election verification of the computer count.

to shift, and so permits real-time-calibrated, “tidier” rigs—contests stolen with a smaller numerical footprint. Unexpected veers in the running vote totals, especially late in the evening after most of the votes have been tabulated, may, in the absence of plausible benign explanations, indicate such a “real-time” rig at work.

It has recently come to light, through the investigative and analytic work of election integrity advocate Bev Harris and programmer Bennie Smith, that in the voting equipment that uses the GEMS operating system, a “fractional vote feature” is embedded, such that votes may be recorded not as integers (1,2,3 . . .) but as decimal fractions (0.75, 0.47, 1.29 . . .).

According to Harris and Smith, this strange feature can be used to “invisibly, yet radically, alter election outcomes by pre-setting desired vote percentages to redistribute votes. This tampering is not visible to election observers, even if they are standing in the room and watching the computer. Use of the decimalized vote feature is unlikely to be detected by auditing or canvass procedures and can be applied across large jurisdictions in less than 60 seconds.” Fractionalized voting—or “fraction magic,” as some observers have dubbed it—has very little legitimate use but great potential as a tool for manipulating vote counts.<sup>12</sup>

**Q: How did we ever come to approve and accept such a dangerous system?**

A: That is a difficult and complex question with answers rooted deep in our political culture and attitudes toward democracy, technology, public responsibility, the value of the vote, and time itself. But the short answer is that the highly publicized debacle of “hanging chads” in the presidential election of 2000 engendered a panic situation that was shrewdly exploited (if not in fact engineered) by those whose agenda it was to computerize American elections. The needs of disabled voters, which could have been effectively addressed without the introduction of computers,<sup>13</sup> were also cynically exploited by computerization’s proponents. The Help America Vote Act (HAVA)

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<sup>12</sup> A detailed and chilling six-part walk-through of decimalized vote counting and its implications for vote count manipulation may be found at <http://blackboxvoting.org/fraction-magic-1/>.

<sup>13</sup> Non-computerized devices, such as the VotePad, had already been developed to allow blind and mechanically disabled voters to mark ordinary paper ballots with their votes; see <http://www.bradblog.com/?p=2330>.

was passed in 2002, creating a powerful mixture of incentives and mandates for states to rapidly computerize their elections.

HAVA's Republican architects<sup>14</sup> secured Democratic cooperation by emphasizing that its passage would lead to increased voter turnout. This should have thrown up a glaring red flag since for over a century the GOP had done (and continues to do) everything in its power to *decrease* overall voter turnout. Given that they recognized that computerizing the voting process would likely promote ease of voting and increase turnout among marginal (i.e., predominantly Democratic) voters, and given that this goal was manifestly the *last* thing that they wished to see accomplished, we must ask just what HAVA's GOP promoters expected in the way of partisan *advantage* from computerization that would be alluring enough to outweigh that hefty partisan disadvantage.

In the climate of post-debacle panic, few thought to question the appropriateness and safety of computers, so much a part of our modern world, for the particular task of vote counting. And those who did were drowned out by a chorus of derision from well-financed promoters. The rush was on. Once the computers were paid for and deployed, it became a powerful *fait accompli* and any return to noncomputerized counting was written off as a ridiculous Luddite retreat.

**Q: You say that the system is indisputably vulnerable and dangerous but what makes you think that it has *actually* been corrupted and elections have *actually* been stolen?**

A: Introducing the Red Shift. When official votecounts come out to the right of other measures of voters' intent—such as exit polls, pre-election polls, post-election polls, and handcounts—forensic analysts refer to it as a “red shift.”<sup>15</sup> Since 2002, when the computers took over the counting, the red shift has been *pervasive*: election after election, in competitive contests bearing national

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<sup>14</sup> HAVA's chief congressional sponsor was Bob Ney. A senior Republican representing Ohio's 18<sup>th</sup> Congressional District, Ney was convicted in 2007 on federal corruption charges (pleading guilty to conspiracy and making false statements to federal investigators) and served a 30-month term in federal prison. HAVA is widely regarded as Ney's signature legislative accomplishment.

<sup>15</sup> The term “red shift” was in fact coined by this author (with apologies to Herr Doppler) in reference to the exit poll-votecount disparities favoring Bush in E2004; it has been adopted into general usage when describing such disparities.

significance,<sup>16</sup> the official votecount has been to the right of *every* baseline measure. We very rarely see the reverse, which we would call a “blue shift.”<sup>17</sup> There is a tremendous amount of data and it all points in the same direction.<sup>18</sup>

From a forensic standpoint, much of our work goes into determining whether those baselines from which the official votecounts keep diverging are themselves valid. Naturally, *if you simply assume all votecounts are valid*, you would then look for reasons to dismiss any data that disagrees with them. You could, for example, disparage all the incongruent exit polls as “off again” because they “oversampled Democrats.” However, we have examined exit poll samples and other baselines closely and found that such is not the case—the problem is definitely *not* that all these other measures of voter intent are chronically incompetent or corrupted.

In 2006, for instance, we examined the national exit poll sample and found that it was to the *right* of every other measure of the national electorate. We knew, therefore, that the massive red shift we found in the 2006 election could not

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<sup>16</sup> Contests bearing national significance include, obviously, the federal elections for president, Senate, and House (where majority or super-majority control is at stake), but also key governorships, state administrative posts, and state legislative control. On rare occasions a contest without *direct* bearing on national politics—an example being the 2011 Wisconsin Supreme Court election—will take on national significance as a proxy or bellwether test of political strength. A more recent contest with great proxy significance—the special election for Georgia’s Sixth Congressional District in June 2017—will be examined in Chapter V.

<sup>17</sup> One fascinating example of such a blue shift was the 2017 Alabama Special Election for U.S. Senate between Republican Roy Moore and Democrat Doug Jones; it will be examined in Chapter V.

<sup>18</sup> See Chapter VII for several evidentiary studies, including: *The 2004 Presidential Election: Who Won the Popular Vote? An Examination of the Comparative Validity of Exit Poll and Vote Count Data* (2004); *Landslide Denied: Exit Polls vs. Vote Count 2006, Demographic Validity of the National Exit Poll and the Corruption of the Official Vote Count* (2007); *Fingerprints of Election Theft: Were Competitive Contests Targeted?* (2007); see also Freeman, S; Bleifuss, J: *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count*, Seven Stories Press 2006; and Miller, MC (ed): *Loser Take All; Election Fraud and the Subversion of Democracy, 2000-2008*, Ig Publishing 2008.

If, in noting the “ancient” dates of these studies, you encounter any temptation to comfort yourself with a “that was then, this is now” qualification, note as well that nothing of significance has been done at any point along the way to give current elections any more protection than the ones subject to these early forensic examinations. Evidence of a vulnerability and its exploitation gathered from 2004 applies with equal force to 2018, and indeed indefinitely until such time as the counting process is made public and observable.

have been a function of a faulty (i.e., left-skewed) exit poll baseline, leaving mistabulation of the votes as the only explanation for the shift that could not be discounted.<sup>19</sup> We went further in 2006 (and again in 2008) and, recognizing that competitive races are natural targets for rigging (the outcome can be altered with a modest manipulation, yielding a high reward/risk ratio) while noncompetitive races are not (much higher risk factor: to alter the outcome you have to shift too high a percentage of votes to pass the smell test), we compared competitive with noncompetitive races relative to an identical baseline. We found that the more competitive a race the more likely it was to be red shifted—the correlation was dramatic.<sup>20</sup>

In 2010<sup>21</sup> we were able to compare hand-counted to computer-counted ballots in a critical U.S. Senate race and again found an outcome-altering red shift of the computer-counted votes, one that we were unable to explain by any factor other than strategically mistabulated votecounts.

More recently, in 2016, our analysis of the respective party primaries found that, while the exit poll results were consistently accurate throughout nearly all the Republican primaries, they were wildly and broadly inaccurate in the Democratic primaries, exhibiting a pervasive intra-party “red shift” to the detriment of Bernie Sanders. It seems very unlikely that the same pollsters, employing the same methodological techniques and interviewing voters at the same precincts on the same days, would be competent and consistently successful with Republicans but somehow incompetent and consistently unsuccessful with Democrats.<sup>22</sup>

In the 2016 general election, the critical “swing” states that provided Trump’s electoral college majority—including Wisconsin, Pennsylvania, Ohio, and North Carolina—were among the most egregiously red-shifted of all the states, with poll-votecount disparities far outside the margins of error. Florida and Michigan, which completed Trump’s improbable table-run of must-win states,

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<sup>19</sup> Simon J, O’Dell B: *Landslide Denied: Exit Polls vs. Vote Count 2006, Demographic Validity of the National Exit Poll and the Corruption of the Official Vote Count* (2007), [http://electiondefensealliance.org/files/LandslideDenied\\_v.9\\_071507.pdf](http://electiondefensealliance.org/files/LandslideDenied_v.9_071507.pdf).

<sup>20</sup> Simon J, et al: *Fingerprints of Election Theft: Were Competitive Contests Targeted?* (2007), [http://electiondefensealliance.org/files/FingerprintsOfElectionTheft\\_2011rev\\_.pdf](http://electiondefensealliance.org/files/FingerprintsOfElectionTheft_2011rev_.pdf).

<sup>21</sup> Simon J: *Believe it (Or Not): The Massachusetts Special Election for U.S. Senate* (2010), [http://electiondefensealliance.org/files/BelieveIt\\_OrNot\\_100904.pdf](http://electiondefensealliance.org/files/BelieveIt_OrNot_100904.pdf).

<sup>22</sup> This pattern in the 2016 primaries will be explored in greater detail in Chapter V. See also the work of Theodore deMacedo Soares at [www.tdmsresearch.com](http://www.tdmsresearch.com).

fell out of this dramatic-red-shift group only because of a geographical oddity: a tiny piece of each state crosses from the Eastern to the Central time-zone. This means the polls at the extreme western tips of the Florida panhandle and the Michigan upper peninsula close an hour later than those in the rest of the state—and exit polls are not posted until that time, an hour after the polls have closed in 99 percent of each state. This in turn permits the “adjustment” of those polls almost all the way to congruence with the votecounts *prior* to public posting, effectively eliminating the tell-tale red shift.<sup>23</sup>

Exit poll-votecount and similar comparisons constitute an *extrinsic* analysis, comparing the votecounts with alternate measures of voter intent. Analysts have also, more recently, begun to employ a powerful tool of *intrinsic* measurement known as Cumulative Vote Share (“CVS”) analysis, “intrinsic” because it measures and analyzes only the votecount itself.<sup>24</sup> A peculiar and consistent pattern has emerged from analysis of precinct-level votecount data from suspect elections: the cumulative vote share of the candidate who is the suspected beneficiary of votecount manipulation unexpectedly increases with increasing precinct size. This “CVS Upslope” does not appear to reflect either demographic or partisanship tendencies of the precincts. It does, however, fit perfectly with what would be a highly rational tactical decision to shift votes in larger rather than smaller precincts: the “splash” made by a vote theft of equal size is correspondingly smaller and less noticeable the larger the pool from which the votes are taken.

I hope that you will take the time to examine the studies included in the “Evidence and Analysis” chapter (Chapter VII), all of which are fully accessible to the non-statistician. For now, the key point is that it is not just a few instances or an equivocal pattern—it is pervasive. It is well-nigh impossible to look at all this data gathered together and *not* emerge gravely concerned that elections have been systematically manipulated.

**Q: What about for those of us who don’t “get” statistics and numbers? Are there any other signs of foul play? What about a “smoking gun?”**

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<sup>23</sup> See Chapter V for a full analysis of the Election 2016 forensic data.

<sup>24</sup> See, e.g., the work of Wichita State University statistician Elizabeth Clarkson, at [www.bethclarkson.com](http://www.bethclarkson.com). See also “An Electoral System in Crisis,” a recent paper by Lulu Friesdat and Anselmo Sampietro, in collaboration with Fritz Scheuren, former president of the American Statistical Association, currently accessible at <http://www.hollerbackfilm.com/electoral-system-in-crisis/>.

A: It is not something that has been thought about or talked about much, but the vote counting process in the United States is *designed for concealment*. Most absurdly, the code that counts or miscounts votes has been ruled a corporate trade secret that cannot be divulged or examined under any circumstances. Take a moment to give that elevation of corporate over public rights—the utter concealment of a process that should by its very nature be a public trust—a chance to sink in.

Nor does the concealment stop with the code. *All* the “hard” evidence—memory cards, programming code, server logs, and actual cast ballots—is strictly off-limits to the public and, in most cases, to election administrators as well. It is precisely because of the secretive nature of the American vote counting process and because all the hard evidence is inaccessible, that the forensic investigation of election security and authenticity performance has come down primarily to numerical, statistical, and pattern analysis. Following along after the election circus with a forensic pooper-scooper (only, as you will see, to have all such evidence ignored or dismissed by the media and the powers-that-be) is a rather ridiculous way to try to insure democracy. But until the public reclaims its right of access to voted-on ballots and the counting process, *it just happens to be the only way we’ve got*.

That said, such numerical, statistical, and pattern analysis is relied upon routinely in fields ranging from aerospace to economics, climate study, epidemiology and disease control. It is also routinely applied, often with the sanction of the government of the United States, to elections pretty much everywhere on Earth *other* than in the United States, periodically leading to official calls for electoral investigations and indeed electoral re-dos.<sup>25</sup> Exit poll disparities—i.e., foreign correlates of the red shift—have factored in the overturning of elections from the Ukraine to Peru and are relied upon for validation of vote counts in Western democracies such as Germany.<sup>26</sup>

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<sup>25</sup> See, e.g., Kharchenko N, Paniotto V: “Exit Polling in an Emergent Democracy;” *Survey Research Methods* (2010), Vol.4, No.1, pp. 31-42.

<sup>26</sup> On the other side of the fence, repressive regimes such as Uzbekistan have now seen fit to ban exit polls entirely, a nod to their utility as indicators of election theft. In 2016 the United States seemed to take a page from the Uzbekistanian playbook, cancelling all exit polling for the remaining states, including critical California, after a long string of unidirectional embarrassments in the first two dozen Democratic state primaries (see <http://www.democraticunderground.com/12512018534>; a search of the *New York Times* and *Washington Post* databases revealed no coverage of the cancellation).

There are also other, non-statistical signs of manipulation. In 2004, for example, in several battleground states touchscreen voters who attempted to vote for John Kerry found that the computers switched and recorded their vote for George Bush. The pattern of reports of vote flipping was over 10-to-1 in that direction.<sup>27</sup> You don't need a course in statistics to recognize that unintentional "glitches" would *go both ways* and eventually (as the number of them increased) even out, fifty-fifty not ten-to-one.

In 2010 in a Democratic primary for U.S. Senate in South Carolina, run on paperless touchscreen voting computers (a.k.a. "DREs"), a "phantom" candidate, who had never campaigned and didn't even have a website, *received 59 percent of the statewide vote*, beating a well-known opponent, a state judge who after campaigning vigorously had pulled within a few percentage points of the far-right Republican incumbent in the tracking polls anticipating their November general election match-up. The shockingly defeated candidate brought his case—including the evidence that, where early and absentee votes were tallied on optical scanners (where, at least in theory, a paper ballot would be available for recounting), he had won handily—to the Democratic Party State Committee, which went into closed session and then voted overwhelmingly to shut down the investigation.<sup>28</sup>

More recently, in the 2017 Special Election Runoff for Georgia's 6<sup>th</sup> CD—another election counted primarily on paperless DREs, and the most expensive U.S. House race in history—the disparity between theoretically verifiable votes counted on optical scanners and those counted on unverifiable DREs was an eye-popping 44 percent. The Democratic candidate, Jon Ossoff, won the verifiable vote by a landslide 64 percent to 36 percent, only to lose the election to Republican Karen Handel when she shockingly won the unverifiable DRE-counted vote 58 percent to 42 percent. It was revealed that the entity responsible for programming the vote-counting computers, the Election Center at Kennesaw State University, had known about and failed to correct major security breaches during the months preceding the election. When an advocacy group sought access to the Center's records as part of its suit to

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<sup>27</sup> See "Reports of vote switching from the 2004 national Election Incident Reporting System (EIRS)," at [http://www.openvotingconsortium.org/files/project\\_evoting\\_vvf.pdf](http://www.openvotingconsortium.org/files/project_evoting_vvf.pdf). The overt *display* of a switched vote makes most sense when seen as a manipulator's programming *error*, in which case these reported incidents would likely be the tip of an iceberg of successfully concealed manipulations.

<sup>28</sup> The story of this bizarre election, presented in greater detail at pp. 61-62, is the subject of the 2016 documentary feature film *I Voted?* directed by Jason Grant Smith and co-produced by Katie Couric (see <https://ivotedmovie.com>).

decertify the unverifiable, paperless DREs, it was further revealed that the Center had permanently erased all data and code pertaining to the programming of the election—four days after the filing of the suit.<sup>29</sup>

The past decade and a half, inaugurating the New American Century of computerized elections, is strewn with such bizarre, shocking, and anomalous results, virtually all of them favoring the more right-wing candidate or proposition.<sup>30</sup> Election integrity advocates have routinely been told to produce a “smoking gun” as a *prerequisite* to the launching of any governmental or journalistic investigation. Since memory cards, software, code, servers, voted-on ballots, and of course corporate correspondence are all regarded as strictly proprietary and off-limits to citizen investigation (and have an uncanny talent for getting shredded, wiped clean, or otherwise destroyed in those extremely rare instances in which that protective wall seems about to be scaled), this demand is an absurd Catch-22.

*It really comes down to an inverted burden of proof.* There is essentially an irrefutable “presumption of innocence” when it comes to the secret process of vote counting in America. You would think that at *some* point and in *some* way the process itself, and those who control it and conceal its workings, would be called upon to produce *some* solid evidence that it is functioning honestly and accurately to translate collective voter intent into electoral results. You would be wrong.

**Q: What about whistleblowers? Wouldn't at least a few who were involved in such an enterprise come forward?**

A: They have. With a couple of chilling exceptions, they have been ignored. Clint Curtis testified under oath in a Congressional hearing that, as a programmer, he was commissioned by the Republican Speaker of the House of Florida to write a program designed to “flip the vote” in south Florida.<sup>31</sup> Having twice passed a lie-detector test administered by the retired chief polygraph officer for the state, Curtis was ignored. Apparently not ignored, however, was Raymond Lemme, the reporter actively investigating Curtis's allegations, who

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<sup>29</sup> See <http://thehill.com/policy/cybersecurity/357323-georgia-election-server-wiped-days-after-lawsuit> and <https://www.apnews.com/877ee1015f1e43f1965f63538b035d3f>. The GA-6 election and its red flags will be examined in greater detail in Chapter V.

<sup>30</sup> See Chapter VII, Study VII, for a timeline of “anomalies.”

<sup>31</sup> See [http://www.bradblog.com/?page\\_id=9437](http://www.bradblog.com/?page_id=9437) and <https://www.youtube.com/watch?v=kelVrADzPYU>.

was found to have committed suicide—evidently, according to forensic photographs, by the always-popular method of stabbing and beating himself to death.<sup>32</sup>

Mike Connell, known as Karl Rove’s “IT guru,” who had set up the off-site SmarTech servers (in Chattanooga, Tennessee) that processed the decisive Ohio presidential vote in 2004, was compelled to testify in a lawsuit challenging the improprieties in that election.<sup>33</sup> After giving a sealed deposition (under the watchful eye of Rove’s legal team) and being informed that he would likely be compelled to return the following month to provide further testimony, Connell was killed when the plane he was piloting crashed.

The attorneys for the plaintiffs in the case, who took seriously threats made by Rove against a wavering Connell, had requested but been denied FBI protection for their star witness. The official investigation of the crash was cursory at best, breaching standard protocol on several key fronts. It was left to Connell’s *widow*, combing the crash site, to find the *earpiece* to Connell’s notorious Blackberry, known to contain on its drive thousands of emails between Connell and Rove. The Blackberry itself vanished.<sup>34</sup> *It is not difficult to imagine other prospective whistleblowers getting the message.*

Another factor to bear in mind is that, although the election theft enterprise can have a massive, balance-of-power-altering effect, its execution requires the participation of no more than a tiny cast of characters. This minimalism keeps the potential ranks of whistleblowers and leakers tiny as well. And finally—as the cases of Chelsea Manning, Edward Snowden, Reality Winner, Harold Martin, *et al* illustrate—whistleblowers whose revelations tarnish the revered patina of American democracy are apt to be treated, by officialdom at least, not as heroes but as criminals.<sup>35</sup>

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<sup>32</sup> See <http://journals.democraticunderground.com/Time%20for%20change/402> and [http://www.bradblog.com/?page\\_id=5479](http://www.bradblog.com/?page_id=5479).

<sup>33</sup> *King Lincoln-Bronzeville Neighborhood Association et al v. J. Kenneth Blackwell et al*, filed 8/31/2006 in U.S. District Court, Southern District of Ohio. Reverend William Moss, the lead plaintiff in *Moss v. Bush*, an earlier legal challenge to Bush’s 2004 election, died on August 2, 2005, following a stroke. While the death of Reverend Moss may best be filed in the “sometimes a cigar” drawer, the deaths of Lemme and, particularly, Connell have both the timing and the hallmarks of something more troubling.

<sup>34</sup> See Worrall S: *Cybergate: Was The White House Stolen by Cyberfraud?* Amazon Digital Services, 2012 at <https://www.amazon.com/dp/B0074NQ5UK/ref>.

<sup>35</sup> The Obama Administration was especially and unexpectedly harsh in its treatment of whistleblowers, exceeding all prior administrations in its prosecutorial zeal. See

**Q: Why has there been so little response from the “immune system”—election administrators, Democrats, the media? You would think they would be all over this.**

A: Yes, you would. It’s always baffling when an entire system with all its disparate players seems to acquiesce in a disaster that you would think any one of those players would step up to prevent. But it is hardly unprecedented. There was an array of institutions, for example, that witnessed the rise of the Nazis to power and—each for its own reasons, knowing better—stood passively and silently by.<sup>36</sup> There are fiefdoms (and psyches) to be protected

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<http://www.counterpunch.org/2015/10/09/mouths-wide-shut-obamas-war-on-whistleblowers/> and <http://www.washingtonsblog.com/2015/05/obama-has-sentenced-whistleblowers-to-31-times-the-jail-time-of-all-prior-u-s-presidents-combined.html>.

<sup>36</sup> Although it has been—until very recently, anyway—all-but-reflexive, when discussing contemporary politics, to eschew all parallels with the Nazi era as “offensive” or in bad taste, the lessons of that all-too-real history are there for the taking and should not be ignored for their unpleasantness. Human nature alters and “evolves” less than it would please us to believe and there is much to be gleaned, from close observation of that very dark chapter in human history, about how that nature may play out on the grand political stage today and tomorrow.

Of the hundreds of present-relevant observations made by William L. Shirer in his classic chronicle *The Rise and Fall of The Third Reich* (Simon & Schuster, New York, 1990), we might consider these: “[Adolf Hitler’s] plan was deceptively simple and had the advantage of cloaking the seizure of absolute power in legality” (p. 196) and “[P]art of [Hitler’s] genius was that . . . he knew the mettle of his . . . adversaries . . . In this crisis [over Germany’s abrupt withdrawal from The League of Nations], as in those greater ones which were to follow . . ., the victorious Allied nations took no action, being too divided, too torpid, too blind to grasp the nature or direction of what was building up beyond the Rhine. On this, Hitler’s calculations were eminently sound, as they had been and were to be in regard to his own people” (p. 211). It should be noted that a world of rational actors continued to pursue normal relations with the Third Reich for years after it had revealed its unmistakable monstrosity for all to see in its first of many nights of mass public book-burning (May 10, 1933), roaring book-fed bonfires unseen on Earth since the darkest days of the Inquisition.

One need not accuse a contemporary political actor of *being* a Nazi, or even sympathizing with them, to recognize analogous calculations and strategies in contemporary translation, and chart to what end a failure to comprehend those calculations and strategies brought our not-so-far-removed predecessors.

The will to absolute power and control—whether sociopathic, psychotic, or merely existential in its genesis—seems to be a recurrent pestilence of civilized humanity, something like a retrovirus in its periodic reemergence. So, it seems, is the public appetite for the simplification and tidiness autocrats so often promise. Yet when the driving goal is to establish anything as unnatural as a “thousand-year Reich”—or, in less Wagnerian modern parlance, “perpetual rule”—resistance will generally be encountered and will tend to grow in response to the increasingly harsh measures

and all else can appear rather abstract and distant to the individual and institutional players faced with a seemingly gradual progress toward what turns out only in retrospect to be a catastrophe.

**Q: OK, but can we look at some specifics? What about the officials who run and certify our elections? If elections are being stolen, isn't it right under their noses?**

A: Of the election administrators, Democrats, and the media, the behavior of the election administrators is probably the easiest to explain. Election officials at every level are the front-line guardians of “voter confidence in the outcome of our elections,” and they seek first and foremost to avoid controversy. When computers are doing the counting, vote totals magically appear at the end of the pipeline; humans with their potential biases and agendas have (apparently) not been involved; and at the surface everything looks clean and tidy. Election officials get to deal with a known and established vendor rather than with what amounts to an itinerant temporary and motley labor force of vote-counters. Human counters need to be trained and supervised; computers need only to be programmed and, in the vast majority of cases, the corporate vendors take care of that.

The terrain is complex but it's not all that different from military contracting: often the official on the local level has little or no choice of which vendor will supply his or her equipment and technical services and, where there is a choice, the winning vendor will generally have done what vendors traditionally do to grease the wheels for the awarding of contracts and the unquestioning allegiance of the decision-making officials.<sup>37</sup> The technical demands of programming and testing opscans and DREs are generally well beyond the capacities of the local officials who will be deploying them, so they have no real

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necessary to overcome it, until a point of crisis is reached at which, if the “Reich” is to survive, all resistance must be crushed.

It is not unlike a game of all-in poker that can proceed quietly enough only to explode into the highest drama at a critical tactical or strategic moment. Thus are totalitarianisms born and reborn (though not necessarily to the heavy tread of jackboots goose-stepping in torchlight parades) and it would be naïve to think that, fortunate enough to be born into an exemplary democracy but less than a lifespan removed from the Third Reich, we ourselves are utterly immune to one or another variant of such a dynamic.

<sup>37</sup> See <http://www.thestate.com/news/politics-government/article213558729.html>.

alternative to simply trusting the vendors and their contractors and technicians.<sup>38</sup>

This is all assuming, of course, that the election official is not himself more devoted to a private or partisan agenda than to the public trust. While the vast majority of election officials are almost certainly trying to be, within their limited technical capacities, decent and fair administrators of their elections, we have also seen outrageous conflicts of interest, where such officials, as lofty as states' chief election administrators, have simultaneously been high-level *campaign* officials—most egregiously Katherine Harris in Florida 2000 and J. Kenneth Blackwell in Ohio 2004, not coincidentally the controversial and decisive states in each of those presidential elections.<sup>39</sup>

But the key point to recognize is that *it does not require corrupt, or even conventionally negligent, election administrators to certify a corrupted election*. They simply do not have either the incentive or the chops to dig deep enough to detect the exploits of non-administrative insiders or hackers.

**Q: OK, how about the Democrats? They seem very reluctant to challenge or question even the most suspect electoral outcomes and have done little to promote serious reform measures even when they've had the power to do so.**

A: A good way to liven up any gathering of understandably morose election transparency activists would be to ask everyone's view on why the Democrats have consistently acquiesced in highly suspect electoral defeats and been so unwilling to look into the role of computerized vote counting in the rightward veer of American politics. You will hear, in four-part harmony, explanations ranging from ignorance to naiveté to denial to intimidation to complicity, and of course stupidity. Frankly, it does boggle the mind. But let me contribute five observations that I hope will be of some help to our understanding:

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<sup>38</sup> The state of Oklahoma, which generally programs its own equipment, is a rare exception to this arrangement—one that, as we will explore in Chapter V, has bearing on our analysis of the 2016 primaries.

<sup>39</sup> The specter of administrative bias has reared its bipartisan head more recently in the 2016 Democratic primaries—where election officials from New York to Kentucky, Arizona, and California have faced well-supported allegations of procedural bias in favor of party-anointed Hillary Clinton—and in the administrative component of the successful efforts to thwart the recounting of votes in the election of Trump.

1. There is enormous pressure on “losing” candidates to concede, move on, and permit the machinery of government to go forward. Consider the plight of Al Gore, who in 2000 was the national popular vote *victor* by over half a million votes (as tabulated), and yet was pilloried for “holding the nation hostage” while he challenged the 537-vote official Bush margin in the state of Florida. If popular vote *winner* Gore could be so effectively painted as a “sore loser,” what of other candidates in less sympathetic circumstances?<sup>40</sup> For many such candidates, challenging an election, however suspect the results, can understandably be seen as an act of political suicide—both for themselves and, by association, for their party.

2. As for the Democrats successfully elected and serving in office, it would take a rare politician to challenge, or even support a challenge to, the legitimacy of the very system that brought him or her to power.<sup>41</sup> Anyone who has strolled the marble corridors of Congress should recognize that, recent hyperpartisan politics notwithstanding, it has the feel of an elite club whose members coexist in a tradition of log-rolling cooperation and are *all alike* underwritten by the grandeur of high public office and the legitimacy of the electoral process that bestowed it upon them. There is great reluctance to rock the boat at a foundational level or indeed to bite the electoral hand that has fed you.

3. Democrats depend on and are obsessed with *turnout*, particularly among the marginal voting groups that make up much of their constituency. With good reason. If turnout levels among the rich, the

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<sup>40</sup> John Kerry, still haunted a decade later by his prompt concession in E2004 (he had accepted \$15 million in donations specifically earmarked for legal challenge of suspect electoral results), spoke candidly about these pressures in a remarkable 2015 interview with *New Yorker* editor David Remnick:

<http://www.newyorker.com/magazine/2015/12/21/negotiating-the-whirlwind>.

<sup>41</sup> I am waiting still for a *victorious* candidate to step to the podium for his or her acceptance speech and say something like the following:

“I am grateful for your votes and the trust you have placed in me today. But if I am to serve you in good conscience I need to *know* that I was in fact your choice, and the secret vote counting system that has given me this apparent victory gives no such knowledge to you or to me.

Therefore I am requesting that, before this election is certified and before I take office, there be a full public hand count of the ballots [impossible, of course, if DREs were part of the counting system], and I am asking you as citizens and voters to consider this observable counting process to be your right and your duty in every election in our proud democracy.”

America’s first *sore-winner*: a genuine elevation of the public trust over immediate political self-interest; a “Man Bites Dog” headline and a potent career booster to boot.

white, the old, the suburban homeowners were equaled among the poor, the non-white, the young, the urban, U.S. politics would scarcely even be competitive; it would be a Democratic rout. But these Democratic constituencies, under the best of circumstances, are reputed to need a lot more prodding to cast a ballot than do their Republican counterparts, and Democratic strategists fear that playing up any concerns about the honesty of elections and vote counting will discourage and lose these potential voters, many of whom are already deep-down skeptics when it comes to the fairness of “the system.” And there is indeed evidence that massive turnout sometimes does overwhelm the rig, which only reinforces Democratic willingness to continue playing on a tilted table what is in the long run bound to be a losing game.

4. In virtually all cases and for obvious reasons, election rigging is *designed* to pass the smell test. Highly competitive elections are targeted, where a shift of just a few percent of the votes can reverse the outcomes. There are generally “benign” explanations for these outcomes—speculations about such factors as the role of money, endorsements, gaffes, and voter turnout (now ironically including *overt* vote suppression via selective purges, diminished access, and restrictive Voter ID laws). For any given election it is ordinarily possible (and of course psychologically desirable, if not imperative) to find *some* reason, other than computerized manipulation, for disappointing and/or unexpected results. *It is the pervasive one-way pattern into which all these individual elections fall that is inexplicable without reference to rigging.*

Falsely reassured as they have been by the electoral victories of 2006, 2008 (which were both the results of bizarre 11<sup>th</sup>-hour *political* shifts that appeared to overwhelm the rig<sup>42</sup>), and 2012 (where credit appears to be due principally to covert intervention by Anonymous<sup>43</sup>), the Democrats have consistently ignored or dismissed this *pattern*, and that behavior remains to be explained. It is worth noting, however, that although

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<sup>42</sup> In 2006 the Foley and related GOP September sex scandals; in 2008 the mid-September collapse of Lehman Brothers and the subsequent market crash. Both dramatically altered the electoral dynamics: in 2006, for instance, the Democratic margin in the Cook Generic Congressional Ballot jumped from 9% in the first week of October to 26% the week of the election, a Republican free-fall of epic proportions; a similar fate overcame McCain in the wake of the economy’s September 2008 collapse. Manipulations calibrated and deployed prior to these unexpected events would have foundered in the political sea-changes.

<sup>43</sup> This under-reported event is explored in greater detail in Chapter III.

Democrats could obviously be portrayed as the victims of election rigging in America, they are firmly entrenched in the corridors of power and would remain so even as a minority party under Karl Rove’s projected “40-year dynasty” of Republican rule.

Election rigging, targeting primary as well as general elections and skillfully applied, can transform (and, copious evidence suggests, has already transformed) the American political spectrum, sliding it further and further to the right, *without in any way disturbing the two-party system and the power duopoly it bestows on Democrats and Republicans alike*. It is not at all clear that the corporate trough-feeding Democrats would care to jeopardize that arrangement, opening the electoral doors to progressives, mavericks, and third parties.<sup>44</sup> *The true victims of election rigging in America are not the Democrats but the uninformed and disenfranchised American people, and ultimately public sovereignty itself.*

5. Finally, there is religion. I don’t mean here belief in a deity but rather a secular religion of equal intensity. To illustrate I’d like to recount an experience I had at a national conference on media reform in 2007. At a panel session I publicly asked Cornell Belcher, at the time chief pollster for the Democratic National Committee, a question about poll-votecount disparities and the red shift. Having stated flat-out that the red shift could not be attributable to any problem with vote counting (i.e., election theft), he then added this curious observation, which I give from memory: “You know, it’s odd but we have the same problem with our own internal polling: in important races, when our polls show our guy [the Democratic candidate] up by 10 percent, we’ve learned that we need to regard the race as a dead-heat toss-up.”

Well. What exactly is to be made of *that*? Such “internal” polls are designed not for political salesmanship but for *maximum accuracy*; they inform the party where support is needed, not needed, or likely to be wasted—where vital campaign dollars should and should not be spent. When such internal polls are consistently “off” in the neighborhood of 10 percent, all sorts of alarm bells should be ringing and ringing loud.

It takes a religious belief in the sanctity of an entirely unseen process, and everything we so desperately want that process to stand for, to be deaf to

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<sup>44</sup> Indeed, many continue to accuse the Democratic Party establishment of having employed a variety of hi-jinx to close the electoral doors to the campaign of progressive candidate Bernie Sanders in the 2016 nomination battle.

those bells. After I pointed this out, Belcher then restated flat-out that the 10 percent disparity between his internal polls and election outcomes could not possibly be caused by election rigging. It felt like something out of *Inherit The Wind* or perhaps *Elmer Gantry*: “Brothers! Sisters! Do ye believe?!”<sup>45</sup>

**Q: And the media? This is potentially the biggest story of their lives. Isn't the “Fourth Estate” traditionally one of the most important guardians of democracy?**

A: Many of us retain a warm spot for the American press still left over from the days of Watergate, when Woodward and Bernstein, *The Washington Post*, *The New York Times*, and even the networks seemed to be among the big heroes. It wasn't that simple in reality, but the impression of both a heroic and a liberal press has been slow to fade, especially with the “liberal” label being flogged mercilessly by the right-wing media machine even as that machine came to dominate both talk radio and newspaper ownership.

Fast forward to 2018: the mainstream media (MSM) is almost entirely a subsidiary of mega-corporations,<sup>46</sup> news budgets are slashed to the bone, opinions (often shouted) have displaced reporting and investigation, entertainment is the order of the day, and there are some insidious limits on the stuff that is, as the *Times* continues to put it, “fit to print.”

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<sup>45</sup> *Esquire* blogger Charlie Pierce has spoken brilliantly to this phenomenon, writing:

“[G]iven that there is overwhelming evidence of a national campaign to suppress the potential vote through law, why should we not believe there is a parallel effort to influence votes after they are cast? Why should we believe that the national campaign to rig an election is purely legal, and not technological? The only reason is that *we don't want to believe it*. The will not to believe is the shifting sand beneath the unstable entire architecture of American Exceptionalism.

Because our attachment to the idea is theological, and not empirical, we can look neither at our history nor our politics honestly. Eventually the lies pile up, one atop the other . . . Eventually, the elections become electronic Kabuki. ‘Our elections must be honest, not because we make them so, but simply because they are *ours*. It will all work out right in the end because this is America, fk yeah, the shining city on a hill.’ Faith eventually undermines reality. We start believing in spirits and incantations. And then we fall, hard.” (at <http://www.esquire.com/blogs/politics/american-exceptionalism-14056595#ixzz2AdeYV3y2>).

<sup>46</sup> As of 2012, 90% of the media in America was under the control of six corporations, with media control becoming only more consolidated since. See <http://www.businessinsider.com/these-6-corporations-control-90-of-the-media-in-america-2012-6> .

That said, it is still astounding how impervious the MSM has been to this story. We have it, off the record, from several top journalists that their employers have flat-out prohibited them from writing or speaking on the matter of computerized election theft or reviewing any of the evidence that it is occurring.

The MSM has what seems to be a "rule" on this: it's OK to make noise about the potential *vulnerability* of the machines in the run-up to elections (Lou Dobbs, for example, was all over this right up through Election Night in 2006; and we witnessed a virtual repeat in the days preceding E2012 and again in 2016<sup>47</sup>). But *following* the election, when evidence pointing to actual manipulation is made available by forensic analysts, all coverage of such a possibility is *verboten*.

*Omerta* is the word that comes to mind, an unwritten code of silence. In 2004, when this story was "fresh," Keith Olbermann had the temerity right after the election to start covering what had happened in Ohio, and actually began to dig into things a bit. He wrote to me that he was "very interested" in the statistical evidence that we had gathered. He devoted several powerful, widely-viewed, and very enthusiastically received segments to it and then . . . POOF! He was off on a two-week vacation of which there had been no prior mention. And when he came back . . . not another word, ever. The biggest story, by a factor of ten, of Olbermann's professional career and he walks away mid-sentence?! It should be obvious that there are some powerful forces at work here set on making sure this story never gets legs.

And I might as well add that it's not just the MSM. The *progressive* media—ranging from *The Nation* to *Mother Jones* to *The Progressive Populist*—have all taken a virtually complete pass. In their pages they continue to discuss—and bemoan—election dynamics and the "new politics" of first the Tea Party and now the Trump Era, without an iota of attention paid to even the possibility that these bizarre and troublesome results may have something to do with a

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<sup>47</sup> See, e.g., Zeynep Tufekci, "The Election Won't Be Rigged. But It Could Be Hacked," *NY Times* 8/12/16; Bryan Clark, "An easy-to-find \$15 piece of hardware is all it takes to hack a voting machine," *aol.com* 8/11/16; Ben Wofford, "How to Hack an Election in 7 Minutes," *Politico*, 8/5/16; etc.: all excellent articles; all, by focusing exclusively on outsider hacking and ignoring vulnerability to insider rigging, woefully wide of the mark.

digital thumb on the electronic counting scale, not so much as a hint that there may be something to question or investigate.

This is perhaps the most mystifying thing of all: watching the progressives of America commit political suicide, as their media buy into a rigged game and seem perpetually to be discussing their own culpability for the latest political setbacks, shocking routs, and disasters—while their entire agenda goes DOA. As far as I can tell, apart from the Wall of Denial itself, the fear in these quarters is *marginalization*, that even mentioning the possibility of actual electronic election rigging will forfeit their hard-earned place at the "serious journalism" table or, in the case of groups such as Common Cause or People For The American Way or the ACLU, the "serious advocacy" table. If that risk seems exaggerated, simply recall the fate of Dan Rather, a titanic media figure permanently exiled after stepping "out of bounds" regarding George W. Bush's National Guard records. As with the whistle-blowers, even a single such demise sends a powerful and unambiguous message to the rest.

From his place of exile (*Dan Rather Reports* on the little-watched HDNet), Rather himself took on at least some of the story in a program that aired in October 2011.<sup>48</sup> But journalism is classic groupthink and, until you have *more than one* brave soul willing to step concurrently into the breach, the story generally dies on the vine. No one followed Rather's lead. Jon Stewart once questioned the technology in his inimitable way on *The Daily Show*, Garry Trudeau in *Doonesbury*, Scott Adams in *Dilbert*, and I hope they (and/or some of their colleagues) will come back to it. Sporadic eyebrow-raising and throat-clearing is better than total silence, but it goes only so far and that is not close to far enough given the massive inertias involved.

Ironically, among many in the progressive media, the attitude seems to be, "If there were anything seriously wrong, the *Democrats* would be all over it" (this from the same people who regularly pillory the Democrats as political sellouts!). So, in a classic and deadly illustration of Bystander's Syndrome (action is distasteful or risky and we can each convince ourselves that someone *else* will "call 911"), everyone sort of sits around waiting for someone else to stick out his or her neck. And about the only press willing to do that are web-based sites such as BradBlog and OpEdNews. They merit very high praise indeed for their persistence. But in America if a story doesn't make it to the

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<sup>48</sup> Dan Rather: *Das Vote: "Digital Democracy in Doubt,"* HDNetTV at [http://www.huffingtonpost.com/dan-rather/digital-democracy-in-doub\\_b\\_774137.html](http://www.huffingtonpost.com/dan-rather/digital-democracy-in-doub_b_774137.html) (see link to iTunes video download at end of article).

*Times* or the networks, it's still a tin-hat conspiracy theory, no matter how well presented and documented. Look at how long it took us to take seriously allegations of performance-enhancing drugs in baseball. Look at how long, even after whistleblower Harry Markopolos had stepped forward, Bernie Madoff continued to operate his Ponzi scheme.

With elections the stakes are immensely higher and the fear that *everything will fall apart* if the truth is rigorously pursued is rather paralyzing. To put it slightly differently, investigation would lead to *knowledge* and knowledge would mandate *action*, an inexorable process once begun. But no individual operating within the vast system of American politics can imagine what action he or she might take—both the personal blowback and the national earthquake would be too catastrophic.<sup>49</sup> So the morally compelling but pragmatically daunting “action imperative” itself paradoxically operates to block the road of investigation at its very beginning: “Look at where we might wind up if we went there, so we won’t go there.”

To get back to the media, I wrote in 2004 that when the autopsy of American democracy is performed the cause of death will be given as media silence. What I've seen in the 14 years since only strengthens that prediction. To me, in fact, the American press and media are the most wretched villains of the piece. Those actually doing the rigging, whether it's a Rovean figure playing God or some cadre of domestic or foreign true-believers, are in a sense "doing their job," just like a lineman “holding” in football to protect the quarterback. The media's job is to *spot the foul*, get at and promulgate the truth. And *they* are the ones who are *not* doing their job. Individually by the hundreds, and collectively as a force, they have served as passive enablers. They appear to be

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<sup>49</sup> It is perhaps instructive to compare the 544-day saga of “Deflategate,” the national crisis that arose regarding the air pressure in Tom Brady’s footballs. In America, football *matters!* The pounds-per-square-inch in the footballs used by Brady, and the possible impact of that number’s manipulation on performance and wins and losses, was frequently the lead story not just of sports sections but of network *news* programs.

Football were impounded (if they had been voting machines or memory cards, the argument that they belonged to the *Patriots* and could not be examined would have prevailed), as were cell phones, emails, etc.; many millions of dollars were spent investigating and litigating.

It was fascinating; it was entertaining; it was “important” without being “too important,” without threatening a 9.6 national earthquake. It was, in short, the perfect story.

either in deep denial, anaesthetized, or content with a sham democracy, which in many cases would suit their ultimate corporate masters just fine.<sup>50</sup>

I have reached out personally and passionately (and more or less temperately) to a goodly number of media movers and shakers, from top reporters, to well-respected opinion writers, to editors and publishers. Here, for example, is an email I sent in the summer of 2017 to David Remnick, the editor of *The New Yorker*, who and which have been persistent in their opposition to and excoriation of virtually all things Trump. I wrote to him in the wake of the Charlottesville incident, to which he had responded with an anti-Trump column of particular pungency, entitled “The Divider.”

Dear David -

Yet another Trumpian outrage (Charlottesville, but does it really matter which one?). Yet another Remnickian outcry (“The Divider,” but ditto). “Resist! RESIST!!” you implore. Yes, OK, in every way we can. I assume we’re ruling out guns and bombs, so then parades, and petitions, protests, poll responses, and personal acts of decency and fairness and kindness—for whatever that may get us.

And then, next year, we get to *vote*.

And those votes become strings of 1s and 0s, counted behind an impenetrable curtain in the pitch-dark of cyberspace by the likes of ES&S, Dominion (oh Lord), and Command Central (Yessir!).

Those 1s and 0s “elected” not just Donald Trump but—if you can bring yourself to consider the forensic evidence, the reams of statistical pattern data (relied upon for everything from astronomy to agronomy)—enough right-wingers at both federal and state levels to give the radicalized GOP the majorities it needs to keep enabling him straight over what would be, if our elections were honest, the electoral cliff.

So you tell us to “Resist!” but what are you doing to protect our primary—indeed only—effectual means of doing so? On this you have dropped the ball—consistently, disastrously. Indeed you are playing a critical supporting role in this

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<sup>50</sup> I suspect also that there is a shared Hamiltonian sneer among these highly educated professional elites who, subconsciously at least, regard public sovereignty per se—in an era in which so much of that public finds the NFL or the Kardashians infinitely more absorbing than the facts and nuances underlying policy debates—as not especially worthy of respect, trust, or electoral protection.

tragedy. All the worse because you have put such superb eloquence and passion into service describing and decrying it.

David, this is not beyond remedy. You'd have to get on the stick though—hard and soon. Start making it a *regular feature* (you know that, in our ADHD nation, once or twice won't do it)—a *running exploration of the rot at the core of the most foundational protocol of our democracy, and a clarion call for the restoration of public, observable vote counting. In time for 2018 and 2020.*

Blame it on the Russians if you must (though insiders have been working this game since HAVA passed in 2002, at least—long before the Russians took an interest). Whatever. Just please recognize that: 1) “Resistance” comes down to elections; 2) Elections come down to the counting of votes; 3) Vote counting in the U.S. is absurdly vulnerable to computerized manipulation and alteration; 4) The political universe is well stocked with ends-justify-the-means true-believers, profiteers, cynics, *and* nihilists more than willing and demonstrably able to exploit that vulnerability; and, most important, 5) This whole damned nightmare could and would end with one stinking honestly and accurately—i.e., publicly and observably—counted election.

Ask the Dutch. Ask the Germans. Ask the Irish. Ask the Canadians. Ask the Norwegians. Is America really that exceptionally stupid as to go it alone in not getting it? Will it be America's fate to succumb to fascism by fraud—because its defenders of democracy could not bear to look seriously and open-mindedly at the evidence of how it was happening?

With appreciation for all your good work. With a shred of hope. With best wishes –  
Jonathan

I write many such missives—sometimes as many as a dozen a day, and there have been thousands of days since this barn door was opened and the horses began to head for the hills. Some are more tactful, less irritable, less urgent; some even angrier, more frustrated, more desperate. I rarely expect answers and my expectations are rarely disappointed. You could overpopulate a small city with bright, thoughtful, patriotic, nonresponding shoulder-shruggers.

I'm not sure how much intimidation is being meted out or even what quarter it may be coming from, but isn't it time someone with a following found the courage to risk his or her job, or even his or her life, in service to the truth? That courage is surely not unprecedented in our nation's history and it is sorely needed now if what the courageous have fought and died for is to survive.

**Q: Is it really possible, in a major election, to “count every vote as cast?”**

A: In theory, yes; in practice, no. There is going to be a bit of “noise” in any system that attempts to count and aggregate large numbers. So “count every vote as cast” is a quixotic and misleading standard. “Noise” is not *The Problem* and neither are so-called “voter” frauds or genuine “glitches.” Computerized election rigging is not about miscounting a vote here and there, nor even about a few people voting twice or in the wrong district. Exploits such as double voting and impersonational voting are open to both parties; are at once low-yield and labor-intensive; virtually never alter electoral outcomes; and in the end, over time and space, wind up a wash. *You can’t take over and hold onto America by hand.*

Nor will “glitches”—which, with the non-intentionality of a flipped penny, break 50-50, yielding no net advantage—turn that trick (indeed we would *accept* computerized counting if truly inadvertent “glitches” were the only problem). *Only deliberate systemic misrecording of votes and/or deliberate mistabulation at the aggregate level can do it, and only computers and their programmers have that power.*

It is beyond ironic that Republican-controlled state legislatures throughout the country, many of which came to power via the highly suspect 2010 election, have in the past few years enacted restrictive Voter-ID laws, several of which have already been ruled unconstitutionally discriminatory by the courts, to deal with a putative epidemic of “voter fraud” that turns out to be virtually nonexistent.<sup>51</sup> Then President Trump himself, hot on the trail of the “millions of illegal voters” who crashed the polls and cost him his prized popular vote victory, set up an “Election Integrity” Commission—co-chaired by Mike Pence and Kris Kobach, the voter suppression-crusading Kansas secretary of state—to get to the bottom of E2016’s massive “voter fraud.”<sup>52</sup> Yet manifestly

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<sup>51</sup> The gates were opened to this templated campaign of voter suppression by another in a series of 5-to-4 party-line U.S. Supreme Court decisions. The 2013 holding in *Shelby County v. Holder*, gutting critical Section 4(b) of the Voting Rights Act of 1965, left states that sported a long Jim Crow history (ironically under mostly Democratic state administrations) free to install *new* Jim Crow laws and regulations without federal approval. See generally, Berman A: *Give Us the Ballot: The Modern Struggle for Voting Rights in America*. New York: Farrar, Straus and Giroux (2015); at <https://www.amazon.com/dp/1250094720/ref>.

<sup>52</sup> The Kobach Commission was stacked with Republican heavy-hitters and included a few window-dressing Democrats who seemed to have little idea what they were there for, and no success at all in getting briefed by Kobach or the Republican majority. It

vulnerable secret vote counting by radically partisan corporations can go merrily on its unchallenged way, pervasive red-shift disparities notwithstanding. There is a real Alice-In-Wonderland feel to it all.

**Q: How does America stack up against other long-established democracies when it comes to electoral integrity?**

A: Not very well. Indeed, in a joint study conducted by Harvard and the University of Sydney, the U.S. elections of 2012 and 2014 scored *dead last* among the group of 54 long-established democracies.<sup>53</sup> Particularly revealing was each nation’s electoral integrity score plotted against per capita GDP.<sup>54</sup> To

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held a couple of public hearings—including a notable one in New Hampshire, at which the vulnerability of computerized counting was amazingly brought to the attention of the stunned commissioners—and was shortly thereafter disbanded—having issued no report, and of course not having found those lurking hordes of illegal voters, but having first attempted a garishly transparent and largely unsuccessful data grab, requisitioning state voter databases and virtually every bit of information states possessed about their voters (very useful for fine-tuning voter-suppression schemes *and* vote-count manipulations).

It would have been interesting to be a fly on the wall when the decision was made to disband the commission. One can imagine the following Trump-Kobach exchange of views:

Trump: “Find me those 5 million illegal voters—or you’re fired!”

Kobach: “We sure as hell tried, Mr. President. Just came up a wee bit short.”

Trump: “How short?”

Kobach: “Well, about 4,999,995 voters. But here’s the thing, sir: if you want to make it to 2020 without getting “impeached” (it’s not my word, sir!), and perhaps even get re-elected so you can continue making America great again, it’s going to take a bunch of thumbs (I’ll be honest with you, sir: Rasmussen’s bogus; you’re still at 40%), including of course some serious voter suppression. Now that’s the kind of thing you want to do quietly, not shine a big Look-At-Me spotlight on. As much fun as I’ve been having going after those illegals and collecting all that cool state data, sir, Mike pointed out to me the other day that all this commission is accomplishing right now is drawing unwanted attention and opposition to our schemes (I mean ‘patriotic purpose’).”

Trump: “So I should shut it down and let you go back to suppressing voters, and whatever else you’ve got up your sleeve, in peace and quiet?”

Kobach: “Yeah, that’s pretty much the 1 and 0 of it—as long as you let me off without having to write a report, sir.”

<sup>53</sup> See “The Electoral Integrity Project: Why Elections Fail and What We Can Do About It” at <https://sites.google.com/site/electoralityproject4/projects/expert-survey-2/the-year-in-elections-2015> (see also [https://www.dropbox.com/s/ziav8ce6c631x0k/The%20Year%20in%20Elections%2015\\_pages.compressed.pdf?dl=0](https://www.dropbox.com/s/ziav8ce6c631x0k/The%20Year%20in%20Elections%2015_pages.compressed.pdf?dl=0) for the full report).

<sup>54</sup> The Electoral Integrity Project (full report), p. 30.

a significant degree, electoral integrity follows national wealth; in essence, free and fair elections are a commodity that wealthier nations can generally better afford. In the graph of all the world's democracies, the U.S. appears as an egregious outlier far below the wealth/integrity curve: a great deal of wealth *not* being spent here on democracy, at least not on its electoral component. This of course squares with the sadly dilapidated state of America's voting equipment and with the budgetary impracticality of beefing up the invitingly low levels of administrative scrutiny and cyber-security.

A recent foreign example serves to place in context the low standard of fidelity to which the process of counting votes is held in America. The Constitutional Court of Austria held, on July 1, 2016, that the mere possibility of irregularities in the counting process (counting in some places was begun before the prescribed cast of observers was present) was enough to void that nation's presidential election results and necessitate a new election.<sup>55</sup> It was not necessary for the challenger<sup>56</sup> to prove fraud or actual manipulation, merely a lapse of full transparency such that outcome-altering manipulation might have occurred unobservably. Quite obviously, if U.S. elections were held to such a standard, our unobservable vote counting process would foster a continual string of electoral re-dos, until it was replaced with an observable process.

Several nations have now taken that step proactively. Moved in large part by the odors emanating from E2016 in the U.S. and by a rapidly growing recognition of the risks associated with concealed, computerized vote counting, the Netherlands and Norway decided, without much in the way of hand-wringing or equivocating, to count their 2017 national elections manually in public—joining Germany, France, Ireland, and Canada as countries that count their national elections at least primarily in public and observably.

**Q: Who are these corporations that count our votes? What makes you think they care who wins elections?**

A: Democratic elections should by their very nature be a public trust. Instead, virtually the entire vote-counting process in America has been outsourced to a

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<sup>55</sup> See [https://www.washingtonpost.com/15c1c843-368b-44a5-8d99-764fa88c52d8\\_story.html](https://www.washingtonpost.com/15c1c843-368b-44a5-8d99-764fa88c52d8_story.html) .

<sup>56</sup> That the challenger, and beneficiary of the Court's ruling, was an extreme right-winger may be food for cynical thought, but we would like to believe that the principles of electoral integrity and vote counting transparency were upheld by the justices without regard to partisan political impact.

few private corporations and contractors that operate behind a heavy screen of proprietary legal and administrative protections. That's bad enough. The actual history of the shape-shifting electronic voting industry and the cast of characters that has controlled it is still worse.<sup>57</sup>

Republican Senator Chuck Hagel owned a good part of the outfit that counted the votes electing and then returning him to the U.S. Senate in Nebraska. Walden O'Dell, CEO of Diebold and a major Bush supporter and fundraiser, in 2003 penned a letter to potential donors in which he stated that he was "committed to helping Ohio deliver its electoral votes to the president next year." O'Dell was seen to be in a unique position to fulfill his commitment, as Diebold was the supplier and programmer of Ohio's voting computers in E2004. Right-winger Bob Urosevich, founder of Election Systems and Software (ES&S), was also the first CEO of Diebold Election Systems (a subsidiary of O'Dell's Diebold, Inc.); his brother, Todd, was Vice-President of ES&S.<sup>58</sup>

As of 2012 the vote-counting corporations had been whittled down to two principals—ES&S and the spookily named Dominion Voting—that between them controlled the computers that counted the vast majority of the votes in America. When you trace the pedigree of these vendors, every road seems to lead back to the right wing: wealthy Texas oilmen, fanatical Fundamentalists, major Republican donors, and prominent Republican politicians. In fact, Hart Intercivic, a junior partner to ES&S and Dominion, had a board majority controlled by an investment firm known as H.I.G. Capital, which in turn boasted Mitt Romney, his wife, son, and brother as major investors through the closely-held equity fund Solamere.<sup>59</sup> Then there are the satellite corporations that do much of the actual programming, servicing, and deploying of the machines—outfits like Command Central, Triad, LHS, Kennesaw State's Center for Elections

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<sup>57</sup> See <https://www.verifiedvoting.org/resources/voting-equipment/> for a comprehensive cataloguing of voting equipment vendors and their products. See also <http://blackboxvoting.org/reports/voting-system-technical-information/> for an examination of the activities, pedigree, and affiliations of the principal vendors. The cast of characters is highlighted in Victoria Collier's 2012 article "How to Rig an Election" (*Harper's* 10/26/2012, as reprinted at <http://readersupportednews.org/opinion2/277-75/14198-focus-how-to-rig-an-election>).

<sup>58</sup> See [http://www.sourcewatch.org/index.php/Diebold\\_Election\\_Systems](http://www.sourcewatch.org/index.php/Diebold_Election_Systems). Bob Urosevich turned up again more recently as Managing Director of Scytl, a Barcelona-based firm that has taken control of electronic databases in a number of states, including several where targeted electronic purges were alleged in the 2016 primaries.

<sup>59</sup> See Ungar C: "Romney-linked Voting Machine Company Will Count Votes in Ohio and Other Crucial Swing States," (10/26/2012) at [http://www.salon.com/2012/10/23/romney\\_linked\\_voting\\_machine\\_company\\_to\\_count\\_votes\\_in\\_ohio/](http://www.salon.com/2012/10/23/romney_linked_voting_machine_company_to_count_votes_in_ohio/).

Systems, and the late Mike Connell’s own SmarTech—secretive to outright impenetrable. Except for Diebold (R.I.P., though a fair amount of its equipment is still in service), virtually all these outfits are privately held and rather small (ES&S has only 450 employees; Command Central was operating out of a Minnesota strip mall), and thus not subject to the kinds of regulation and scrutiny that might apply in the case of publicly-traded corporations. It is, all told, one of the shadowiest industries in America.

All the self-promotion and self-congratulation on a sleek website like Dominion’s cannot quite obscure the fact that what these Lords of Elections are really saying is, “You may as well trust us. You have no other choice.” While the privatization of the vote-counting process gives rise to a situation in which electronic thumbs on the scale could in theory be sold to the highest bidder, the partisanship of the outfits that program, distribute, and service the voting equipment is far more likely to translate in practice to *politically selective access* or, in the language of criminologists, opportunity and means. The consistently one-sided forensic evidence in the elections of the computerized era supports this assessment. It really *is* the man in the magician’s suit with the “Vote For So-And-So” button, if not on his lapel then on the inside of his sleeve, who takes our ballots and disappears behind the curtain.

**Q: You state that virtually all the anomalies, disparities, and shifts are in one direction, favoring the right-wing candidates and positions. But what about 2006, 2008, and 2012? Those were Democratic victories! Why would forces on the right rig to lose?**

A: They didn’t rig to lose, they rigged to win—or, more precisely, *to maximize winnings and minimize losses within bounds of acceptable risk of detection*. With a single very odd exception, to be discussed in the next chapter, *every* post-HAVA biennial election from 2002 through 2016 exhibited a red shift both nationally and in the key states and districts.<sup>60</sup> The red shifts in 2006 and 2008 were in fact massive but, in both 2006 and 2008, unexpected 11<sup>th</sup>-hour events (in 2006 the lurid sex scandals and cover-ups enveloping Republican Congressman Mark Foley and several other prominent right-wingers; and in 2008 the September collapse of Lehman Brothers, which ushered in the Great

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<sup>60</sup> In E2002 the red shift could not be measured because the exit polls were withheld from public view. That it *existed* is clear from the fact that the plug was pulled on the exit polls because they were so far “off” that the networks could not come up with a plausible explanation for the magnitude of the red-shift disparities in key races (e.g., Cleland/Chambliss in Georgia, Hagel/Matulka in Nebraska).

Recession the day after John McCain had proclaimed the economy “strong”), dramatically altered the electoral dynamics.

In 2006, for instance, the Democratic margin in the nonpartisan Cook Generic Congressional Ballot (“On Election Day will you vote for the Republican or Democratic candidate for Congress in your district?”) jumped from 9 percent in the first week of October to 26 percent the week of the election, a Republican free-fall of epic proportions; a similar fate overcame McCain in the wake of the economy’s nosedive on Bush’s watch late in 2008. These leftward political sea changes would have swamped a rightward manipulation that turned out, in light of the unforeseen events, to be under-calibrated; and they came too late to permit rescue via recalibration and redeployment of tainted memory cards and malicious code.

The devil is in such details, but these red-shift red flags were ignored, trampled in the 2008 Obama victory parade. It is of course possible for Democrats and left-leaning candidates to win elections and there comes a point where, if the margin is large enough, reversing the outcome through computerized rigging, although technically feasible, would no longer pass the smell test. Nor is it necessary, after a certain point, for every vulnerable contest to be targeted for rigging: in bodies such as the U.S. House and most state legislative chambers, a bare majority will suffice for practical partisan control and “padding” becomes a low-reward gambit.<sup>61</sup> But it should be obvious that, in a finely balanced nation such as America, it is a long-term, indeed permanent, losing proposition to be required to poll supermajorities of 55 to 60 percent in order to eke out electoral victories. Even a relatively light thumb can effectively wreak havoc with the political scales.

It is now comprehended by strategists across the political spectrum that shifting demographic patterns have handed the Democrats a massive and growing electoral advantage nationwide.<sup>62</sup> The radicalization of the Republican

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<sup>61</sup> We will revisit this phenomenon with regard to the elections of 2017 in Chapter V.

<sup>62</sup> Indeed the Computerized Vote-Counting Era *began* with reports of “The Emerging Democratic Majority,” which was the title of a 2002 book by highly respected political demographers John B. Judis and Ruy Teixeira (see <https://www.amazon.com/Emerging-Democratic-Majority-John-Judis/dp/0743254783>). There is a whole cottage industry devoted to producing tortured explanations of what became of it. One can certainly imagine the book’s role in motivating the emerging Republican minority to take preventive measures, beginning with the Help America Vote Act (HAVA) of 2002.

Party should only have heightened that advantage.<sup>63</sup> To win general elections and hold on to power—barring massive scandals and other egregious political fiascoes—Republicans are now obliged to turn to *structural* strategies to offset their demographic and political handicaps. Thus we have witnessed a spate of restrictive Voter-ID laws ostensibly passed to combat a nonexistent “epidemic” of “voter” fraud; ruthless gerrymandering of U.S. House and statehouse districts,<sup>64</sup> with lurking proposals to extend the gerrymander’s cynical powers to the presidential contest itself;<sup>65</sup> the financial advantage gained through the U.S. Supreme Court’s 5-to-4 party-line *Citizens United* and *McCutcheon* decisions<sup>66</sup> and the torrents of corporate campaign cash to which they opened

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<sup>63</sup> It is worth recalling what happened to the *Democrats* when they similarly radicalized (Eugene McCarthy, George McGovern) in the Vietnam era when votes were still being *counted* rather than *processed*. They were *crushed* and all-but-marginalized for a generation.

<sup>64</sup> The gerrymander is of course a tool available as well to Democrats, who have not shied away from its use. Demographics, however, give Republicans a significant advantage here: Democratic constituencies tend to cluster in large urban areas, which can be gerrymandered into near-100% Democratic districts, more effectively “consuming” Democratic voters within a given state than a pro-Democratic gerrymander can consume the less geographically-concentrated rural and suburban Republican voters.

E2010 was a critical election at the below-the-radar statehouse level because their key state legislature victories gave Republicans control of the decennial redistricting process, based on the 2010 Census, for the U.S. House and many key statehouses. A subtle beauty of this down-ballot strategy lay in the fact that voters ultimately grow weary of gridlock and, given the very dim prospects for wresting the House from GOP control, could ultimately be persuaded to turn to a (Republican) presidential candidate who “would be able to work with Congress.” That candidate turned out to be Donald Trump.

<sup>65</sup> Apportioning presidential Electoral College votes by congressional district rather than the current statewide winner-take-all basis has the ring of fairness but would in actual effect subject the presidential election to the same ruthless gerrymandering process that has locked in 90% of U.S. House seats and would allow a few successfully rigged down-ballot (i.e., state legislative) elections to deliver control, through that process, of *both* the U.S. House and the White House indefinitely. Direct Popular Vote for the presidency (i.e., doing away with the Electoral College) would, unlike the congressional district apportionment scheme, be a genuinely progressive reform, *but only if coupled with the restoration of observable vote counting*. Under the current computerized system, doing away with the Electoral College and simply counting the national popular vote would make it possible for election riggers to shift votes with equal impact *anywhere in the country*, making it even easier to escape the modicum of scrutiny that is currently focused on battleground states.

<sup>66</sup> *Citizens United v. FEC*, 558 U.S. 310 (2010), effectively defined corporate campaign contributions as protected “free speech,” gutting much of the framework for regulating or limiting it. *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014), then compounded the damage by striking down aggregate limits to corporate contributions.

the floodgates; and of course the “Vote Wednesday” flyers and robocalls and related disinformation campaigns, which broke new ground with the Trump campaign and have tendrils being traced far and wide and deep, from Cambridge Analytica<sup>67</sup> to every major social media platform to bot farms and the Kremlin.<sup>68</sup>

*Such tactics have served their purpose if they can bring contests within smell-test distance (in tracking and exit polls), where a computerized mistabulation can be outcome-altering without being shocking, and thus suspicion-arousing, in its magnitude.<sup>69</sup> Restoration of the democracy Americans have been led to believe is their birthright will require removing in turn each of these thumbs on the scale. If we agree that the most covert and direct thumb is the most potent and insidious, we will begin with the rescue of the votecount itself out of the partisan, proprietary pitch-dark of cyberspace and into the light of public observation.<sup>70</sup>*

**Q: If the evidence pointed to a pervasive “blue shift,” advantaging the Democrats or progressive candidates, instead of the pervasive “red shift” that you have found, do you think you would still be engaged in this work to the same degree?**

A: Very frankly—human nature, or at least my nature, being what it is—I don’t think so. This is frustrating, depressing, demoralizing, and potentially dangerous work, and there’s every incentive to stop banging your head against the spiked wall before you no longer have one to bang. It is common to view vote counting as an abstract, rather academic matter, but it all-too-obviously

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<sup>67</sup> See <https://www.wired.com/story/what-did-cambridge-analytica-really-do-for-trumps-campaign/>.

<sup>68</sup> See <http://www.politifact.com/truth-o-meter/article/2017/apr/04/four-things-know-about-russias-2016-misinformation/>.

<sup>69</sup> Harvey Wasserman and Bob Fittrakis have coined the term “strip and flip” to describe this two-pronged strategy, with the “strip” referring to the various overt schemes and the “flip” to the covert electronic manipulation, both of which appeared to be on display in the 2016 Democratic presidential primaries and general election (see Fittrakis B & Wasserman H: *The Strip and Flip Selection of 2016: Five Jim Crows & Electronic Election Theft* at <https://www.amazon.com/dp/B01GSJLW0I>).

<sup>70</sup> Harvard Law professor Lawrence Lessig, whose 2015 single-issue campaign for the presidency rested entirely on a “clean elections” platform, apparently did not agree—omitting the counting process itself entirely from the set of issues he was willing to address, despite repeated appeals for its inclusion. He told me it just didn’t seem “as important” to him. As I wrote to a colleague, “When the fringe treats you like fringe you know you’re the fringe.”

can be one with very real, concrete, far-reaching, practical and historical consequences. That is a big part of what makes it compelling for me and drives my continuing efforts. Especially now in the Age of Trump, when democracy itself seems to hang in the balance. It could not get much less abstract.

I've always believed that Cassandra's fate—to see the truth and the hidden danger and never to be believed—was the worst of all the terrible punishments meted out by the jealous Greek gods. I little thought it would be my lot in life and I don't care for it one bit. If I had uncovered evidence of electronic fraud and it were both sides doing it such that it was a wash, or the Left doing it so that it was pushing America to the more progressive pole, it would still be a blot on democracy, and I would still have attempted to bring it to the attention of officials, the media, and the public. *Unobservable vote counting is, whomever it benefits, inherently insane*. But, after being ignored or patronized for 15 long years of these efforts, I'm pretty sure I would have been willing to mutter "*c'est la guerre*" and move on to other things. Living in the world of *CODE RED*, and immersing myself in this Alice-In-Wonderland nightmare of the Big Lie, is oppressive. Just not as oppressive as the fascism to which computerized election theft threatens to deliver the democracy I was fortunate enough to be born into but have stopped taking so for granted.

But the "pervasive blue shift" is a rather ridiculous hypothetical because, if it were the *Left* in control of the voting apparatus and the "shocking" results were favoring their cause, it is impossible to imagine that the political strategists and media of the Right would *not* be all over it, demanding investigations and even "observable counting." An odd asymmetry I know, but just look at all the Voter ID legislation the Right has rammed through in response to a nonexistent epidemic of "voter fraud" with no impact on electoral outcomes.<sup>71</sup> So it's a lead-pipe cinch that they would hardly be supine and acquiescent in the face of evidence of targeted computerized vote counting fraud that was altering the outcome of hundreds of key elections and threatening *them* with permanent minority status. I doubt *my* perseverance would be needed.<sup>72</sup>

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<sup>71</sup> See Minnite L: *The Myth of Voter Fraud*, Cornell University Press 2010, <http://www.amazon.com/Myth-Voter-Fraud-Lorraine-Minnite/dp/0801448484>; see also Mayer J: "The Voter-Fraud Myth," *The New Yorker* (10/29/2012) at [http://www.newyorker.com/reporting/2012/10/29/121029fa\\_fa\\_fact\\_mayer?printable=true](http://www.newyorker.com/reporting/2012/10/29/121029fa_fa_fact_mayer?printable=true).

<sup>72</sup> Though I did question the counting anomalies in the victory of Democrat Doug Jones over Republican Roy Moore in the 2017 U.S. Senate Special Election in Alabama—as detailed, with a twist, in Chapter V—an effort certainly not inspired by partisanship.

I have often been asked how my personal political views impact my capacity to function as a fair and impartial analyst of election forensics. It is a fair question. My answer is that I—and Election Defense Alliance (EDA), the organization for which I serve as Executive Director—share the nonpartisan goal of election integrity manifest in transparency, accountability, and, above all, observable vote counting. After all the deceptions and outright lies along the campaign trail, after all the perverting infusions of undisclosed corporate cash, even after all the “Vote Wednesday” robocalls and all the other dirty tricks to which the desperate make resort, if nothing more than the *counting of the votes* could be trusted, our particular and rather narrow mission would be fulfilled.

In our quest to restore observable vote counting—which should be a no-brainer on its face but instead seems a quaint and faintly ludicrous notion in the wake of the *fait accompli* blitzkrieg of post-HAVA computerization—we are called upon to document and analyze the red-flag patterns that result from *non-observable* vote counting. After all, if it ain’t broke why fix it? And in this work, it must be said, there is *nothing random or nonpartisan* about the patterns that keep turning up wherever contests are competitive and carry either direct or indirect national significance. There is hardly ever a “blue shift” anywhere, just a pervasive “red shift” election after election<sup>73</sup>—even in the elections where 11<sup>th</sup>-hour seismic political shifts overcame it and led to (diminished) Democratic victories—and a consequent inexorable veering of American politics to the right. This is the *reality*, call it partisan or call it nonpartisan as you choose.

**Q: But what if I don’t buy that “reality?” What would you say to someone on the other side of the great political divide who believes you’ve cherry-picked your evidence or that the red shift stems from faulty polls, or who believes that Trump is legitimate but *Obama* stole the White House and it’s the *Left* that has found a way to rig American elections?**

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<sup>73</sup> The shifts that so distort the translation of the public will are by no means restricted to general (i.e., inter-party) elections. As will be detailed in Chapter V, the 2016 Democratic *primaries* exhibited what appears to be among the most egregious red shifts of the computerized era. Narrowing the candidate options available to voters in November has as powerful an impact in altering political direction and thwarting public sovereignty as does rigging November itself. In a very real sense, using E2016 as a cardinal example, the elimination of Sanders as an opposing candidate was the most critical step in putting Trump into the White House.

A: OK, I'm a leftie and you're a rightie. Each of us believes the other side has been rigging elections or would be if given the opportunity. You call the polls "fake news" while I have lost faith in the vote counts. With computerized counting neither of us has any reason to trust the other side—particularly in the present political environment, so rich in anger and poor in trust. Electoral legitimacy is now being called furiously into question from all sides.

*Under these conditions especially—and to say nothing of the “Russians”—aren't we BOTH entitled to an observable counting of the votes?*

Whether an unobservable computer count leads to actual rigging or not, it has now begun to invite serious, dangerous suspicion, distrust, and unrest. Isn't an observable count, going forward, likely to be the *only* way to restore trust in an electoral system that is breaking down before our very eyes, right *and* left?

*Doesn't counting votes publicly and observably just make fundamental sense for our country in the state it's in?*

**Q: The blogosphere is awash in “conspiracy theories,” ranging from the highly plausible to the truly outlandish. Where would you place computerized election theft on that spectrum and how do you deal with the reflexive dismissal inherent in the “conspiracy theory” label?**

A: It should be obvious that not every conspiracy is a theory. *History* is awash with undisclosed agreements and arrangements to work toward the achievement of some end that would generate opposition and resistance were it openly declared. That is all a conspiracy is.<sup>74</sup>

The real problem with conspiracy theories is separating the wheat from the chaff. It is possible to imagine and allege virtually *anything* when it comes to

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<sup>74</sup> Michael Parenti put it memorably in his 1996 book, *Dirty Truths*:

“Those who suffer from conspiracy phobia are fond of saying: ‘Do you actually think there’s a group of people sitting around in a room plotting things?’ For some reason that image is assumed to be so patently absurd as to invite only disclaimers. But where else would people of power get together—on park benches or carousels? Indeed, they meet in rooms: corporate boardrooms, Pentagon command rooms, at the Bohemian Grove, in the choice dining rooms at the best restaurants, resorts, hotels, and estates, in the many conference rooms at the White House, the NSA, the CIA, or wherever. And, yes, they consciously plot—though they call it “planning” and “strategizing”—and they do so in great secrecy, often resisting all efforts at public disclosure. No one confabulates and plans more than political and corporate elites and their hired specialists.”

nefarious or threatening human behavior. Wild allegations and revelations have become a staple of the Information Age and studies have shown that confabulations tend to find far more eyeballs than do honest reporting and analysis. “Fake News” plays twin roles: as both turmoil-inducing genuine disinformation and as a quick way to dismiss *bona fide* information that might be damaging to one’s cause or brand. Both are terribly dangerous, and both make the evaluation of “conspiracy theories” especially difficult. Our era calls for heightened wariness of paranoid conspiracy theories, in so many of which is lurking a destructive intent. At the same time it calls for heightened vigilance of “official stories” and opacities that may be tools of subjection as well as protection. There is no easy escape from this collision of imperatives.

I met a man some years ago who claimed that the U.S. government had, during one or another of his stays at a Veterans Hospital, surgically implanted “chips” in his brain that were being used to wirelessly torment him and send “information” to his consciousness, and moreover that many others had been subject to this same secret manipulation. “Mr. Chips” maintained a calm and rational affect and he discussed other aspects of politics and economics with admirable acumen. He carried with him a thick folder of MRI films purporting to show the location of the implanted chips.

While politely repressing a reflexive snicker, I found it very disquietingly occurring to me that my own earnest presentation of the red shift and stolen elections would elicit precisely the same reaction from many auditors. “Mr. Chips” and I were both “conspiracy theorists,” each readily dismissed with that damning and clever label. Was there in fact a distinction and, if so, how might it be apprehended? How does one know, without a painstaking review of all the evidence (his MRIs, my tables and graphs), what to take seriously and what does not warrant further investigation?

What “Mr. Chips” and election integrity activists *do* have in common is that the events we are alleging to have taken place are deeply disturbing to the point where the human psyche recoils against acknowledgement.<sup>75</sup> Some concealed behavior is concealed precisely because it would meet with a negative response, ranging from opposition to outrage, were it brought into the open.

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<sup>75</sup> Indeed, recent research has established that both individuals and groups can be so maximally averse to the *knowledge* that they have been duped that they often choose to *continue* being duped rather than to be confronted with the evidence that they *have been duped* (see Abby Ellin: “The Drama of Deception,” *Psychology Today*, July 2015, at <https://www.psychologytoday.com/magazine/archive/2015/07>).

If Jose Canseco could be dismissed (and ridiculed) for daring to allege that *baseball* was not what it seemed, and that those majestic 500-foot home runs were the derivative of pharmaceutical enhancements rather than wholesome heroics, how much stronger the impulse to dismiss (and ridicule) allegations and evidence that not the national *pastime* but the national *future* is being systematically subverted—that America is, in effect, a sham democracy?<sup>76</sup>

If we sweep away all alleged conspiracies and all covert activities with a big broom, we get to live in a world of presentable surfaces that seems and feels a lot more hospitable and comfortable. I certainly did not want to “waste my time” exploring the possibility that people are walking around with government-implanted microchips in their brains, and it is exactly such aversion that gives the term “conspiracy theory” such pejorative power and such protective effect for those engaging in covert activities.

So it is up to the auditor to use his or her best judgment, life experience, knowledge of history and basic mathematics, and understanding of human nature in evaluating the evidence presented. That means eschewing the convenience of easy labels like “conspiracy theory” and conclusory, quasi-religious presumptions like “America is the Beacon of Democracy and therefore such undemocratic things could never happen here.”

**Q: How do we know for certain, independent of election results, what kind of country America is—how red, how blue?**

A: We don’t. Even in a very small polity, say a town with 5,000 residents, you can’t tell much about a polarizing contest or issue without an actual vote. You may know more people who say they intend to support X, but that says more about the company you keep than about how the rest of the town, let alone the state or the country, plans to vote. This has never been truer than it is today, in a nation hyper-polarized into enclaves and bubbles. One side may have the preponderance of yard signs or radio spots, but that tells us little

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<sup>76</sup> It is worth noting that the *vulnerability* of computerized vote counting to fraud—the *risk* of continuing to use it for our elections—can in no sense be considered a conspiracy theory, any more than can the state of disrepair of America’s roads and bridges. It is the attempt to present evidence of *actual* fraud and theft that triggers the dismissive “conspiracy theory” label. Yet only suspect elections and suspicions of actual rigging seem to bring major public attention and urgency to the otherwise technical and unsexy topic of vote counting. This is a most unfortunate dilemma.

beyond the relative size of the campaign budgets.<sup>77</sup> Polls might be—and obviously, in the case of major elections, are—taken *ad nauseam*. But polls are highly sensitive to the particular sampling methodology used and usually wind up dancing a fluctuating and conflicting conga when elections are close.<sup>78</sup> Even when polls and predictions are *not* close, in the Age of Trump’s post-factual politics they are easily written off as “fake news.”<sup>79</sup>

This is what makes voting itself so powerful and, you would think, sacrosanct. Elections are the Official Scorecard—and the *only* Official Scorecard—of American politics. *There is really no other way to know*. As columnist James Graff, having first noted the vagaries of polling, put it most succinctly when speaking of E2012, “The truth won’t come until Election Day.”<sup>80</sup> What comes on Election Day is a *reality* of elected officials who will govern us, but can anyone say with genuine assurance that they know that this reality equates to the actual *truth* of the votes as they were cast?<sup>81</sup> What if, to put it in Kellyanne Conway lingo, we are placing our faith in “alternative votes?”

Our skepticism of polls and other pulse-takings of our nation is, to an extent, justified. Our blind and absolute faith in the votecounts is *not*. What is as irrational as it is deadly is our persisting belief that *all* other measuring sticks must be flawed—a belief based squarely on the fact that they all diverge from the votecounts, which must not be questioned.

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<sup>77</sup> In today’s post-*Citizens/McCutcheon* “dark money” era, the size of respective campaign war chests is a far better indicator of private than of public favor.

<sup>78</sup> See Chapter VII, Study V for the additional distorting effect of the votecount-poll feedback loop.

<sup>79</sup> And increasingly ignored when it comes to the making of policy. With the fate of DACA recipients and universal background checks for gun purchasers under debate in Washington, for example, one would never guess that the progressive position on each high-profile issue is polling at or near 90% in favor. Republican office-holders seem strangely comfortable and confident spitting into these gale-force winds—the Age of Trump mantra being “Elections Matter!”—though this new, defiant and seemingly tone-deaf kind of political behavior is exactly what one would expect of office-holders who believed themselves immune to all electoral consequences.

<sup>80</sup> See *The Week*, 10/19/2012, p.3.

<sup>81</sup> Another, rather more personal, way of framing this question: “How much would you be willing to wager on the accuracy of a given votecount and electoral outcome—say one such as Ohio 2004 or GA-6 2017, draped in a forensic red flag—ten bucks, the farm, your life?” If not prepared to bet your life that the official computer count and a full, observable human canvass will produce the same result, can you say you “*know*?” And, if you were *not* willing to bet your life, why would you be willing to bet your country or the world?

And the “truth” of which Graff spoke is more expansive than the election of Candidate X or Candidate Y. Consider the fortunes of the National Rifle Association, which has held the line against overwhelming public opinion (and passion) because it has become axiomatic that, especially for any Republican politician, to cross the NRA is to sign one’s own electoral death warrant. The NRA grew into this 800-ton gorilla because of its virtually perfect track record in defeating—generally in low-scrutiny primary elections—any candidate hinting at support for even the most tepid gun regulation. A few well-targeted upsets were enough to set in stone the rules of the political game for more than a generation.<sup>82</sup>

Our biennial elections, far more than the endless parade of opinion polls, *define* America—both in terms of who occupies its seats of power and as the single snapshot that becomes the enduring national self-portrait that Americans of all stripes carry in our mental wallets for at least the biennium and more often for an era. It is also, needless to say, the portrait we send abroad. False elections bequeath to all Americans—right, left, and center—nothing less sinister than an illusory collective identity and the living of a national lie. Think of altered electoral choices as a testamentary letter that goes out, *over our forged signature*, to the world, to the historians, to our children.

**Q: What link, if any, do you see between the opportunity to steal elections and the current hyperpolarization of American politics? Why do you think the GOP itself has veered and continues to veer further and further right? Do you think they all somehow *know* that elections are rigged and that they can win no matter how extreme or politically reckless they get?**

A: Logically, a player who knows the fix is in and victory assured will “bet the house.” Why not get as much bang as possible for your buck? Or, as the young Bulgarians learned in *Casablanca*, when Rick tells you to leave all your chips on 22, you leave all your chips on 22. Translated into contemporary politics, if you believe you can win an election no matter what, there is no incentive to play to the middle. You can ignore how successful “triangulation” was for Bill Clinton and indeed ignore all conventional political wisdom that says that you

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<sup>82</sup> For an excellent account of NRA m.o., see <https://www.newyorker.com/magazine/2018/03/05/the-nra-lobbyist-behind-floridas-pro-gun-policies>; note that the NRA’s outsized clout with a broad swath of office-holders and candidates rests ultimately on what amounts to a handful of victories in what we might term “demo” elections.

have to dilute your radical agenda, your “true belief,” in a bid to capture the moderates and independents in the center of the political spectrum needed to win competitive general elections.

According to the “classical physics” of politics, the extremist behavior of the GOP makes very little political sense and indeed it keeps surprising pundits all along the political spectrum, who keep scratching their heads as such behavior continues to be rewarded rather than punished electorally.<sup>83</sup> Such would of course be the behavior of politicians who knew the fix was in and it may be driven by chief strategists who are either involved in the rigging of elections or who have deduced that it is going on and adjusted their strategies accordingly.

But it is also possible to understand the Right’s new extremism from a behaviorist standpoint as the consequence of electoral experience operating on political strategy. That is, without inferring any *knowledge* of a rigged game, when forays in political extremism are rewarded rather than punished electorally, the conventional wisdom that says you must play to the center is soon enough discarded in favor of a new wisdom that says, “Go ahead, shoot the moon.” Each successive “win” further reinforces this new wisdom.<sup>84</sup>

As countless behaviorist experiments have shown, it doesn’t take much such conditioning to mold new behaviors. And this is true as well of the Democrats,

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<sup>83</sup> Of course, since the electoral results are unquestioned *fact*, reasons *must* be found for the strange voter behavior. There is a cottage industry dedicated to “explaining” the electoral results of the computerized era, from Thomas Frank’s 2004 bestseller, *What’s The Matter with Kansas?* (voters ‘distracted’ by social issues like guns and abortion) to 2015’s *NY Times/ProPublica* piece by Alec MacGillis, “Who Turned My Blue State Red?”

Referring to Maine’s far-right governor, Paul R. LePage, MacGillis writes, “His [safety-net slashing] crusade has resonated with many in the state, who re-elected him last year.” That is, we know and can write that LePage’s crusade “resonated” *because* he was re-elected. And we believe that re-election was an accurate gauge of public “resonance” *because* we trust a vulnerable, unobservable, partisan-programmed, computerized vote-counting system. With the election of Donald Trump, this cottage industry had to move into an industrial park.

<sup>84</sup> As of this writing there is every indication that the Republican leadership in Congress is willing to countenance a scenario in which Trump stomps all over the rule of law—including, it may be, the firing Special Counsel Robert Mueller—while they themselves stand permissively by and then face the electorate in November. By any rational political calculus, this Thelma & Louise drive over the cliff can’t end well for them. Why, then, have they joined hands and hit the gas? It appears to be a rock-solid conviction that they are immune to all electoral consequence. Indeed, computerized vote counting has been the GOP’s rabbit’s foot since 2002. With it swigning from the rear-view mirror, would they not have every reason to believe their car can fly?

who conversely have been punished rather than rewarded electorally over the past decade, at every political level other than the White House, as they ricochet from one “losing” strategy to the next.<sup>85</sup> The new hyperpolarized and right-veering American politics certainly coincides with the advent and proliferation of computerized counting, but it does not require widespread *knowledge* of systemic electoral manipulation to account for this correlation.

**Q: What in your view is the significance of the year 2010?**

A: If I had been sitting in a war room with a map and a timeline and a blueprint for long-term political domination, I’d have kept zeroing in on 2010 as the year to make it all happen. There is of course much to be gained by capturing the White House but, if one’s goal is *enduring political control*, the U.S. House of Representatives and key swing-state legislatures and administrative posts become the natural strategic targets—especially in years ending with a “zero,” in which the crucial decennial (i.e., census-based) redistricting power is up for grabs.<sup>86</sup>

Taking over the U.S. House and key statehouses in 2010 offered the alluring prospect—via the tactical powers of gerrymandering and administrative control of elections, as well as the enormous advantages of incumbency for

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<sup>85</sup> Both political impotence *and* political omnipotence have, over time, a disorienting effect on the parties and a corrosive effect on the body politic.

<sup>86</sup> Because U.S. House seats must, by constitutional mandate, be proportioned to population, the decennial U.S. Census generally results in a reapportionment of House seats allocated to different states and provides an opportunity for state legislatures to redraw congressional district boundaries—a process known, when undertaken for partisan political advantage, as gerrymandering. There are only very loose restrictions on congressional district geometry and, with the aid of “big data,” including house-by-house voter profiles, it has become possible to gerrymander ever more precisely and ruthlessly, to great overall advantage.

The perfect gerrymander would create, from the same population pool, a few districts in which the opposing party would receive 100% of the votes and many districts in which your party would win each election by a small margin. The redistricting undertaken by the GOP after E2010 did not miss that ideal by much. Redistricting also affects state legislative districts, and proposals have been floated by the GOP to apportion *presidential* electoral votes by congressional district, effectively subjecting presidential politics to the gerrymander.

David Daley’s 2016 book *RATF\*\*KED: The True Story Behind the Plan to Steal America’s Democracy* (<https://www.amazon.com/dp/1631491628>) examines E2010 as the critical election in a scheme known as REDMAP. Typically, even Daley, who delves deep into the cynicism behind REDMAP, cannot bring himself to question any of the shocking E2010 electoral results essential to its spectacular success.

both U.S. House members and state legislators—of locking in GOP House and statehouse control for a minimum of a decade, virtually irrespective of any adverse trends in either demographics or public opinion. Maintaining House control (and a minimum of 41 Senators needed to sustain a filibuster) in turn would confront any Democratic president with political gridlock, while control of purple (i.e., swing-state) statehouses would permit systematic structural changes (passing restrictive Voter-ID and voter-qualification laws, breaking union power, exercising control of election administration and oversight) with profound impact on the electorate’s composition and the electoral process itself.<sup>87</sup> All this was on the platter in 2010.

Recall as well that U.S. House and state legislative elections are not individually exit-pollled and that even pre-election polling for all but a very few of these contests is sparse, so there are virtually no race-by-race baselines for forensic analysts to work from. There are a couple hundred key, but essentially invisible, contests scattered across the country that add up to the *aggregate* partisan victory responsible for cementing the overall political infrastructure of America in place. The *individual components* of the grand outcome receive virtually no media attention (even political junkies would be hard-pressed to keep in focus what is happening in OH-5, OR-4, FL-13, etc., let alone Wisconsin *State Senate-9<sup>th</sup>*)<sup>88</sup> and the only forensic red flag is to be found in an anomalous *overall* statistical pattern, which likewise receives no media attention.

With the afterglow of Obama’s 2008 triumph further reducing the scope and intensity of election protection efforts, the risk level associated with grand theft of E2010 was negligible, the reward was profound, the reward/risk ratio accordingly off the charts. And indeed E2010 was the election that ensured that Americans would have a choice between gridlock and right-wing hegemony for years, if not decades, to come.<sup>89</sup>

From the very beginning, Election Year 2010 waved a succession of red flags that offered an indication of what was in store for November. The January

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<sup>87</sup> See, e.g., Steven Yaccino and Lizette Alvarez, “New G.O.P. Bid to Limit Voting in Swing States,” *New York Times*, 3/29/2014, at <http://www.nytimes.com/2014/03/30/us/new-gop-bid-to-limit-voting-in-swing-states.html>.

<sup>88</sup> For readers interested in *trying*, I strongly recommend the deeply informative, nonpartisan, and comprehensive [www.ballotpedia.com](http://www.ballotpedia.com) website.

<sup>89</sup> It is fair to say that the advent of Trump and the potential impact of his governance and behavior on down-ballot electoral politics was not on the radar of the GOP tacticians of 2010.

special election to fill the Senate seat of the late Ted Kennedy in Massachusetts was the first of them. The upset victory of Republican Scott Brown over Democrat Martha Coakley served to put the Tea Party on the map, eliminate the Democrats' 60-vote filibuster-proof Senate majority, and kindle expectations for a big move to the right in November.

Why was this key election suspect? For starters, there was every incentive in the world to rig Coakley-Brown and every opportunity in the world to get away with it. There were no exit polls (itself very strange for a statewide contest with such important implications), no equipment spot checks, no audits, not a single officially-sanctioned handcount to verify any optical scanner tabulation, and not a single optical scanner memory card examined for malicious code (e.g., the +X/-X zero-counter scheme introduced earlier). If in fact the vendor corporations, or any insiders or hackers with access to the programming or distribution processes, had chosen to serve a private political agenda rather than the public trust, there would be nothing in the official processes of voting, vote counting, and election certification to indicate that such a breach had occurred. Thus it was an election that could have been stolen with virtually zero risk to yield an enormous reward.

But was it? We will never *know* because the actual ballots were never excavated (from the bins at the bottom of the optical scanners) to be counted and compared with the machine counts,<sup>90</sup> and all have long since been destroyed.

We were presented with a seismic result with no observable evidence to support it. It could have been legitimate, and it could equally well have been a cheap trick conjured in the darkness of cyberspace. So forensic analysts looked at the only evidence that *was* available—the votes of the 71 Massachusetts jurisdictions that counted their ballots in public by hand.<sup>91</sup> They found that Coakley *won* in these jurisdictions by a margin of 3 percent, while Brown won by 5 percent where the optical scanners did the counting in secret. The chance

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<sup>90</sup> An attempt was made at such an excavation, when the organization MassVOTE, using Massachusetts Public Records Law, persuaded a town clerk from the Worcester suburb of Shrewsbury to allow a hand recount of the ballots from a single precinct to take place. The (Democratic) Secretary of State, rather than supporting an extension of the investigation, immediately sent letters to all city and town elections officials strictly forbidding them to follow suit. See <http://massvote.org/2010/09/massvote-conducts-first-ever-independent-audit-of-massachusetts-voting-machines/>.

<sup>91</sup> See [http://electiondefensealliance.org/files/BelieveIt\\_OrNot\\_100904.pdf](http://electiondefensealliance.org/files/BelieveIt_OrNot_100904.pdf), also included as Study IV in Chapter VII.

of this 8 percent total disparity occurring if the handcounts had been distributed randomly around the state was infinitesimal, one in hundreds of billions. But analysts recognized that the handcounts were not randomly distributed and that handcount and optical scanner jurisdictions represented discrete constituencies. Perhaps the handcount communities where Coakley won were more Democratic in voter registration or had a more Democratic voting history, or perhaps they were clustered in a part of the state where Coakley was more popular.

Analysts looked at each of these “benign” explanations in turn, along with others involving such factors as advertising expenditures broken down by media market, and found that none of them held water. The handcount jurisdictions were more *Republican* by voter registration; they had voted in exact congruence with the optical scanner jurisdictions in the previous *two* U.S. Senate races, which were noncompetitive and thus not targets for rigging; and they had given Coakley a *lower* percentage than the optical scanner jurisdictions in her only previous statewide race. Granted Coakley, thinking she was a shoo-in, ran a very lackluster campaign; granted there was a surge of enthusiasm and a big influx of money from the right, making a tight (and therefore riggable) race out of a blowout. But those factors—which would have had the same impact on voters *regardless of how their votes were tabulated*—do not explain why some 65,000 handcount voters, shown to be to the *right of a random sample*, voted so differently from (i.e., to the *left of*) the voters who voted on optical scanners. That remains entirely without explanation, unless one is willing to consider electronic vote manipulation. Indeed, with every other explanation examined and ruled out by analysts, *only the method of vote tabulation appeared to explain what happened in Massachusetts.*

Another red flag waved a few months later over South Carolina. In the Democratic primary for the nomination to oppose incumbent Tea Party favorite Jim DeMint for re-election to the United States Senate, a bona fide candidate (State Circuit Judge Vic Rawl) was the prohibitive favorite (so much so that no one even bothered polling) against a cipher (Alvin Greene) who made no campaign appearances, had no headquarters or website, was facing the prospect of indictment on pornography-related charges, and didn’t appear to possess the personal funds needed for the election filing fee, which was paid anonymously on his behalf. The Rawl challenge to DeMint had gathered a good deal of steam, the Democrat’s statewide popularity such that, with a fraction of the name-recognition, he had already closed to a threatening 7 points in tracking polls against the powerful GOP incumbent in a very red state.

The primary was held in June and the votes were tallied on paperless touchscreen (aka “DRE”) computers—the darkest of voting cyberspace. Amazingly, Greene won—*with 59 percent of the vote*. Despite being known to almost literally no one, he officially received *100,362 votes*. In an eyebrow-raising footnote, after losing that November to DeMint by a margin of 34 points, Greene, apparently encouraged by his performance against Rawl, entered another Democratic primary, this time for a seat in the South Carolina House of Representatives. He received 36 votes.<sup>92</sup>

In response to his baffling defeat, Rawl brought a challenge before the Democratic State Committee, which had original jurisdiction over the conduct of the primary election. Several election integrity experts testified in Rawl’s favor, citing, among other glaring anomalies, huge disparities between early/absentee votes counted by optical scanner (where the voter-marked ballots would at least theoretically be available for human recount) and the at-poll unrecountable paperless touchscreen tallies. The Committee responded favorably to Rawl’s case throughout the hearing, then went into closed session and voted by a margin of 55 to 10 to reject the challenge and close the case without further investigation.<sup>93</sup>

After such appetizers it was not surprising to find a ptomaine-laced main course served up in November 2010. With exit polls thoroughly “discredited”—unless conducted anywhere else on the planet other than in the United States—it did not seem to matter that 16 out of 18 competitive U.S. Senate elections were red-shifted, 11 out of 13 governorship elections were red-shifted, and in the U.S. House elections the total red shift translated to 1.9 million votes, enough to reverse the outcome of dozens of targeted House races. The “Great Tea Party Sweep” was duly reported at face value.

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<sup>92</sup> For his part, the ultraconservative DeMint, after all that, abruptly left the Senate in 2013, resigning to head The Heritage Foundation, a right-wing think tank.

<sup>93</sup> The election and challenge form the core of the 2016 documentary feature film *I Voted?*, directed by Jason Grant Smith and co-produced by Katie Couric; see <https://www.ivotedmovie.com>; see also <http://www.bradblog.com/?p=7902>. For an eerily parallel shutdown of U.S. House candidate Clint Curtis’s 2006 electoral challenge—a refusal by the (Democratic-led) House Administration Committee to admit or consider evidence in the form of signed voter affidavits indicating that enough Curtis votes had been mistabulated (uncounted or shifted) to alter the election’s outcome in his opponent’s favor—see <http://www.bradblog.com/?p=3947>.

Beyond the dramatic red shifts, though, was an extraordinary vote distribution pattern in the E2010 Republican takeover of the U.S. House. The GOP took comfortable—and, as we shall see, enduring—control of the House by virtue of a massive net gain of 128 seats (or 29.4 percent of the 435-seat chamber), the greatest such pick-up in any midterm election going back to 1970, during which period the average pick-up was a mere 42 seats (9.7 percent). What was even more remarkable was that the GOP achieved this extraordinary national blowout without any remotely proportional sweep of the total vote. Its aggregate popular vote victory margin for House elections nationwide (as tabulated) was a very pedestrian 6.9 percent, yielding an off-the-charts ratio of seat gain to vote margin.<sup>94</sup> By contrast, the *larger* Democratic popular vote margin of 8.2 percent in E2006 yielded a pickup of only 61 seats, less than half of the GOP’s E2010 haul.<sup>95</sup> At some point this “result efficiency” stops being a matter of dumb luck: the minimization of losses (E2006) and maximization of victories (E2010) *relative to votes received* is exactly what would happen in election years where close races were being targeted for manipulation so that the well-targeted shift of a small percentage of the nation’s votes produced a major shift in the overall pattern of wins and losses.

To achieve the coup that was E2010, the GOP had to confound well-set pre-election expectations governing the swath of 111 House elections considered competitive. Specifically, the pre-election consensus identified 40 contests in which Democrats were “expected to win narrowly,” 42 contests that were projected as “tossups,” and 29 contests in which Republicans were “expected to win narrowly,” yielding 11 (40 minus 29) more contests in the Democratic column. What happened was this: the GOP won this overall Democratic-leaning “competitive” swath *by 25 seats*, 68 to 43. They took nine of the 40 contests where the Democrats had the edge, lost *none* of the 29 in their own column, and they took the “tossups” *30 to 12!*

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<sup>94</sup> Note that this disproportionate ratio of electoral wins to aggregate vote margin could not be attributed to the vagaries of gerrymandering, as E2010 *preceded* the decennial redistricting and the majority of in-play districts were still, at the time of the election, gerrymandered to favor *Democrats*.

<sup>95</sup> The numbers look even stranger when one considers the information that Election Defense Alliance received, just prior to Election Day 2010 from a source with ties to the Rove operation, that California, because of the relatively stringent election protection protocols in place, would be “left alone.” Sure enough, the E2010 GOP avalanche excluded California entirely: there was *zero* change in the distribution of the state’s huge, 53-seat U.S. House delegation. Which of course means that the 128-seat net gain was from an effective pool of only 382 seats (33.5%) rather than 435, fully a third of a chamber in which the vast majority of seats are recognized as “safe.”

Those are some very uncanny numbers,<sup>96</sup> and they are quite the companion piece to the “Landslide Denied” weirdness we saw in E2006—the previous midterm election, with a far more unpopular sitting President, from which the Democrats managed to glean so much *less* than expected in the way of representation and governing power. Both E2006 and E2010 were also red-shifted relative to the national (i.e., aggregate) House exit polls, though House races, as we’ve seen, are not exit polled on an individual basis, making race-by-race statistical forensics all but impossible and thus keeping the level of scrutiny invitingly low. Indeed, aside from what journalist Bob Koehler once referred to as “the silent scream of numbers,”<sup>97</sup> these 120 or so competitive and critical U.S. House races scattered across the national map were effectively *beyond scrutiny*—ultra-low-risk targets all, but delivering a trove of enduring political reward. Further still off the radar were the hundreds of *state* legislative races that collectively conferred game-changing decennial redistricting and election administration powers.

Republicans—mostly the far-right Republicans who emerged from the even-further-below-the-radar primaries—pretty much ran the table and are effectively lodged in place with, at minimum, the enduring power to obstruct at will nationally and legislate at will in a swath of suddenly “red” states. This is a baseline power that can only be augmented by any subsequent manipulations. And of course E2010 (along with E2002 and E2006 before it and E2014 after it) should inform our awareness and concern about *all* “off-year” and down-ballot elections. They are prime targets and, as E2010 teaches us, the gifts that keep on giving.

**Q: What about when pre-election polls are accurate? If widespread election rigging on behalf of conservative candidates were happening, wouldn’t there *always* be a disparity between the polls and the election results?**

A: Yes, there *would* be such a chronic disparity—a “red shift” from the pre-election polls to the election results—if 1) *every* competitive race were being targeted for manipulation, *and* 2) the pollsters were continuing to employ the sampling methodology they used before the computerized voting era. But 1)

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<sup>96</sup> The “N” is large enough to make these outcomes highly improbable as a matter of chance: the GOP had a 1% chance of winning 68 or more of the 111 competitive contests and less than one half of one percent (0.004) chance of winning 30 or more of the tossups.

<sup>97</sup> Koehler B: “The Silent Scream of Numbers” (4/14/2005), at <http://commonwonders.com/society/the-silent-scream-of-numbers/>.

we recognize that untargeted rigging makes little strategic sense, and 2) in fact pollsters *were* repeatedly embarrassed during the first few years of post-HAVA computerized voting when their polls kept getting elections *wrong*, consistently predicting outcomes to the left of the official results.

Enter the Likely Voter Cutoff Model (LVCM), a sampling methodology introduced by the prestigious Gallup polling operation.<sup>98</sup> One by one the other pollsters, facing the existential imperative to get elections *right* or go out of business, followed suit and adopted the LVCM.

The LVCM comes in various tweakings but the classic model employed by Gallup uses a series of seven “screening” questions to determine which randomly-selected respondents will be included in, and which excluded from, the sample. The questions—which include such factors as stability of residence, political awareness, and prior electoral participation—operate disproportionately to screen out students, transients, renters, and the impoverished—in other words, more of the Democratic and left-leaning constituencies.<sup>99</sup>

It is established that these constituencies generally have lower rates of voting than do wealthier, whiter, home-owning constituencies, but their rates of voting *are not zero; in fact, they are a long way from zero*. Assigning such respondents a 0 percent chance of voting by eliminating them from the otherwise random sample, when a significant percentage of these respondents will in fact wind up casting votes, has the effect of skewing the sample sharply to the right. And, because the pollster can choose how *many* “incorrect” answers to the screening questions will disqualify the respondent from inclusion in the poll’s sample, *the LVCM operates effectively as a tunable, right-skewing fudge factor*—a mathematically unjustifiable sampling model that mysteriously keeps getting highly competitive and significant elections (which of course are the logical targets for both polling *and* rigging) “right,” thereby keeping individual pollsters and the polling industry as a whole in business.

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<sup>98</sup> Under the direction of the late George H. Gallup III, the religiously inclined son of the organization’s founder; see <https://www.nytimes.com/2011/11/23/us/george-gallup-jr-of-polling-family-dies-at-81.html>.

<sup>99</sup> See Simon J: *The Likely Voter Cutoff Model: What Is So Wrong with Getting It Right?* (Chapter VII, Study V); see also, with props for being transparent, <http://www.gallup.com/poll/143372/Understanding-Gallup-Likely-Voter-Models.aspx> for Gallup’s explanation of its model, and [http://www.huffingtonpost.com/2012/10/09/gallup-poll-likely-voters\\_n\\_1950951.html](http://www.huffingtonpost.com/2012/10/09/gallup-poll-likely-voters_n_1950951.html) for its potent effect.

The pollster's job, as pollsters see it, is to do whatever is necessary to generate accurate predictions of election outcomes (fair or foul), not to *question* those outcomes. Thus pre-election polling can, without a trace of malice on the part of the pollsters, become part of a corrupted feedback loop beginning with rigged vote counts, and so become progressively more corroded and less useful as a baseline for verifying electoral outcomes.<sup>100</sup>

The LVCM sometimes “kicks in” a month or two prior to elections (as the likelihood of voting is thought to become more measurable and pollsters alter their methodologies accordingly), at which time Republican and/or mainstream candidates get a “bump” in the polls often mistaken for true momentum. This artificial bump is often seen to alter race dynamics and outcomes, as voters respond positively to the perceived momentum shift. Conversely, many pollsters now use one or another version of the LVCM year-round. The effect of this full-time right-skewed polling via the LVCM has been to paint a false and distorted portrait of the American electorate, such that right-wing electoral triumphs like E2010 and E2014, rather than being shocking and suspect, seem instead to corroborate the poll-established “conservative” mood of the country.<sup>101</sup>

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<sup>100</sup> Note must be taken here of Scott Rasmussen, one-time pollster for the Bush campaign, whose version of the LVCM is so extreme that he winds up interviewing, with only modest exaggeration, a “roomful of Republicans.”

Rasmussen, a consistent outlier well to the right of all other prominent polls (his policy-related as well as election-tracking polls are so far to the right of everyone else's as to have become something of an industry joke), in April 2018 finally gave Trump his first approval rating north of 50%, while other pollsters, even using the right-boosting LVCM, continued to measure it at 10 points below that.

Trump predictably lost no time crowing about his “popularity,” touting Rasmussen's “accuracy” in predicting the results of E2016, and advising all the “inaccurate” other polling firms to “get new pollsters.”

All of which, of course, begs the question of why push-pollster Rasmussen, with his extreme version of an already dubious methodology, managed to be more in line with the vote counts than did all of his competitors.

<sup>101</sup> Ironically, when in the run-up to E2012 certain pollsters moved *away* from the conventional seven-question LVCM screening approach (not in an effort to restore methodological purity but simply because voters would too often hang up on telephone robo-polls that included too many such preliminary questions), causing their polls to edge Democratic, there was an outcry from the pundit chorus on the right about the rash of “left-skewed” polls. Gallup, known along with the more extreme Rasmussen for their consistent lean to the right, set things straight with an LVCM poll that appeared to show, for those unaware of the methodological prestidigitation, a sudden Romney surge of nearly 10% in early October.

## Q: What about the exit polls as a baseline?

A: Exit polls avoid entirely the vexing question of whether the respondents included in the poll results actually wound up casting a vote. We know they voted (though whether that vote was honestly counted is another matter) because they are questioned, for the most part, immediately upon exiting their polling place.<sup>102</sup> The accuracy of exit polls is such that they are relied upon around the world, often with the sanction of the United States government, as one of the principal validators of elections.<sup>103</sup> Exit poll-votecount disparities have, in elections from the Ukraine to Peru, spurred official investigations of electoral fraud and indeed several electoral “re-dos.”

Not so in America. In America, final exit polls *always* match the votecounts with what appears to be uncanny precision. Do they do so because America is the very beacon of democracy? Afraid not. They do so because they are *forced* to match the votecounts, “adjusted” (this is the term of art) to virtual congruence with the votecounts on the theory that any disparity between the exit polls and the votecounts *must* stem from the inaccuracy of the exit polls, so “correcting” that “inaccuracy” will make the exit polls more useful for the kind of post-mortem academic analysis that keeps our pundits in such high demand (e.g.,

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Poll-bashing is a favorite pre-election sport of both the Right and the Left (see, e.g., Giokaris J: “Presidential Polls 2012: Skewed Polling and Biased Media Coverage . . .” at <http://www.policymic.com/articles/15219/presidential-polls-2012-skewed-polling-and-biased-media-coverage-give-obama-false-advantage-over-romney>). The roiling arguments about methodology leave many—right, left, and center—dismissing the polls altogether as chimerical and, again ironically, awaiting the actual election results—unobservable, unverifiable, *more faith-based than the polls*—for the “truth.”

<sup>102</sup> With the expansion of early and absentee voting, some “exit” polling must now be done via telephone, with the screening question being some variation of “Did you cast a vote other than at your polling place in today’s election?”

<sup>103</sup> In the U.S., prior to the advent of computerized voting, the problem with the exit polls was that they were accurate enough that networks took to calling even close elections well prior to poll closing times, which often had a negative impact upon turnout (why bother voting when the outcome has already been decided?). A deal was struck to withhold exit poll results until after all the polls had closed in the state in question. There was neither legislation nor regulation involved, merely a ‘gentleman’s agreement’ on the part of the networks, one that appears to be slipping, as pre-poll closing exit poll results have begun to be posted on media websites; see, e.g., <https://twitter.com/nytgraphics/status/697246344038256642> for 6:30 pm (pre-closing) posting of NH exit poll crosstabs by NYT[imes] Graphics on Feb. 9, 2016.

“How important was the economy to 35-to-49 year-old males who voted Republican?”).<sup>104</sup>

But adjusting the exit polls toward congruence with the votecounts requires (in theory at least) some votecounts to work with. So immediately after the polls close, when there are as yet only a smattering of votecounts available, the first posted exit polls reflect (again in theory) primarily the actual responses of those polled, weighted to the pollsters’ best estimate of the demographic composition of the electorate.<sup>105</sup> It is those exit polls—which we refer to as “unadjusted,” though there is growing reason to believe that partial votecounts made available before poll closing are being used to begin the “adjustment” process *prior* to first public posting, thus narrowing any disparities—that give us what is usually our first glimpse of the “red shift,” the exit poll-votecount disparity that would be so damning were it to appear anywhere else on Earth other than in our country.<sup>106</sup>

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<sup>104</sup> Lurking behind this explanation for the exit poll adjustment process is a more unsettling concern. In the words of the late Warren Mitofsky, known as the “father” of exit polling: “In a democracy, it’s the orderly transfer of power that keeps the democracy accepting the results of elections. If it drags on too long, there’s always a suspicion of fraud” (personal email correspondence).

<sup>105</sup> Weighting is necessary because, although we could wish for the mathematical precision of a perfectly random sample, the reality is that there are several non-random factors affecting an exit poll sample: so-called “clustering,” which refers to sending interviewers to representative precincts rather than randomly interviewing voters throughout the state; selection bias, the possibility that interviewers will favor certain potential respondents over others; and response bias, the greater or lesser proclivity of certain sets of selected respondents to refuse participation in the poll.

Exit pollsters measure each of these metrics carefully and factor this data into their weighting of responses. If, for example, the response rate of an identifiable group (e.g., a certain race, age group, or gender) is below or above average, the responses from that group will be upweighted or downweighted accordingly.

A great deal of historical data and pattern analysis is brought to bear upon this process. It is not perfect—and critics have, from 2004 on, seized on any imperfection as a fatal flaw—but it has led, in the case of contests where there are *not* grounds for suspecting manipulation (e.g., noncompetitive or unusually well-protected races), to consistently good agreement (i.e., within the stated margin of error) between exit poll results and votecounts. Examples are the Republican presidential primaries of 2016 and the Virginia and New Jersey off-off-year elections of 2017, both of which are explored in detail in Chapter V.

<sup>106</sup> Because these “unadjusted” exit poll numbers disappear *forever*, often within *minutes* of appearing on network Election Night websites, analysts must preserve them for forensic use in the form of screenshots. In E2004, when an apparent server glitch allowed the unadjusted numbers to remain up for hours rather than minutes (until after midnight EST), I was able to print out (I didn’t yet know how to screen-capture) several hundred pages of unadjusted data (most states and the national exit poll with

When the votecounts for competitive and significant elections come out to the right of the exit polls, as they so often do, an explanation of some sort has to be provided. Mere exit poll “inaccuracy” will not suffice, as that would lead to misses in *both* directions, not the unilateral pattern that continues to emerge. And since, because this is America, *the votecounts cannot be questioned*, the “explanation” that has had to be ginned up is that the exit polls chronically and consistently oversample Democrats. This would be comforting—if only it were true. Putting aside for a minute that it would be passing strange for a group of polling experts at the height of their profession—fanatical about pattern analysis and error correction, trying their damndest to get it right and with a batch of corrective tools at their disposal—to keep making *the same error* in state after state and year after year, the fact is that we have examined exit poll samples from the seven biennial elections 2004-2016 (the E2002 exit polls, the first of the computerized voting era, were so far “off” that they were withheld from the public entirely; E2012 will be examined in the next chapter) and found *zero evidence* of such a left skew.<sup>107</sup> In comparing the first-posted, ostensibly unadjusted exit poll samples to *every other measure of the electorate*, including census and registration data as well as multiple academic surveys,<sup>108</sup> we have found neutral or, more frequently, right-skewed exit poll samples in every case.

We believe a major reason for this is that those valuable first-posted, ostensibly unadjusted exit polls are weighted in large part to demographics drawn from the *adjusted* exit polls of prior elections—because it is the adjusted polls that are deemed “accurate.” How were those prior polls adjusted? Inevitably to the right to match red-shifted votecounts, and when you adjust the exit poll *results* to the right, the exit poll’s *demographics* (what the

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full crosstabs; it was a slow process that took all evening). I naively and erroneously assumed that thousands of similar data captures were being made around the country and the globe but, with election integrity activism still in its infancy and as yet no general understanding of the importance of unadjusted exit poll data, I discovered by the early morning hours that I was in sole possession of this data, which, once released and analyzed, became the initial basis for the questioning of the E2004 votecount.

<sup>107</sup> See, e.g., Simon J, O’Dell B: *Landslide Denied: Exit Polls vs. Vote Count 2006, Demographic Validity of the National Exit Poll and the Corruption of the Official Vote Count* (2007), presented as Study II in Chapter VII.

<sup>108</sup> See, e.g., American National Election Studies (ANES), affiliated with the University of Michigan, at <http://electionstudies.org/index.htm>.

electorate looked like) are carried along for the ride.<sup>109</sup> So a sample that was initially 39 percent Democratic to 35 percent Republican, when “adjusted” (i.e., reweighted) to make the “who did you vote for?” numbers match the vote counts, might now become 37 percent Democratic, 37 percent Republican.<sup>110</sup> And that then becomes, in effect, the “truth” about the electorate and the new standard for weighting *future* exit polls (which are then further “adjusted” if even that right-skewed weighting fails to match the vote counts).<sup>111</sup>

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<sup>109</sup> The adjustment, or “forced weighting,” process involves the imposition of a final weighting factor, keyed to the candidate-preference results (i.e., vote counts), on the existing weighted data.

If, for example, a state’s final percentage for candidate Trump were 55% but his weighted exit poll percentage were 50%, the adjustment would upweight Trump’s exit poll results by 10% ( $1.10 \times .50 = .55$ ). This upweighting factor would be applied not just to the “who did you vote for?” question but to *every* question on the questionnaire of *every* respondent who indicated he/she voted for Trump, including of course all the demographic questions. Thus, if there were 1000 respondents who indicated they had voted for Trump, and 700 of these indicated that they were “Republican” voters, following the adjustment process, that number would become 770 ( $700 \times 1.10$ ), and the percentage of “Republican” voters among the exit poll respondents (and, if we trust the vote count and therefore the adjustment process, among the electorate) would increase accordingly.

This reweighting would also affect such measures as gender, age, race, income, etc.; the strength of the effect would depend on the degree to which the particular measure was correlated with candidate preference (e.g., gender would likely be less correlated than Party-ID). Respondents whose candidates’ vote counts came in below their exit poll percentages would of course be downweighted, along with all the demographic measures on their questionnaires.

<sup>110</sup> This is in fact what occurred in the 2004 Presidential election nationwide (and also in Ohio). A 4% demographic red shift may not look like much but it was enough to provide the “winning” margin for Bush and to give the GOP what amounted to a 4% exit poll handicap in the *next* election, which of course serves from a forensics standpoint to fully negate a would-be 4% red shift and thereby *fully cover* any future manipulation of that magnitude.

<sup>111</sup> It must be noted here that exit polling and pre-election polling are, each in its own way, responsive to official electoral results and hence become part of a feedback loop contaminated when those results are distorted.

In the case of exit polls, the raw response data must be weighted according to the pollster’s best estimates of electoral composition (which is to say, oversimplifying a bit, that there should be x% Democrats, y% Republicans, p% whites, q% nonwhites, etc., in a given sample). This weighting of course affects the poll’s outcome and it is in turn influenced strongly by the demographic percentages drawn from *previous* elections’ exit polls. But the exit polls from the prior election(s) used for this purpose are exit polls that have been *adjusted to congruence with the vote counts in those prior elections* (this is standard practice, on the theory that the vote counts are accurate and so any exit poll that is not congruent with those vote counts must be inaccurate, not only as to its “whom did you vote for?” results but as to its demographics).

Taking this all into account, when, as is generally the case, the exit polls are “off” such that the vote counts come out to their right, while the exit poll sample is at worst neutral (or, more often, right-skewed), it provides compelling evidence of *vote mistabulation*.

That evidence becomes even stronger when we have the data available to perform *second-order comparisons*. A first-order comparison would consist of measuring the disparity between exit polls (or any other baseline) and vote counts in either a single election or a series of elections. When the disparities are large (near or beyond the margin of error) and in the same direction in a significant proportion of the contests examined, it is possible to calculate some very large numbers representing the odds of the set of such disparities occurring—say “one in 4.24 billion.” This certainly *looks* impressive, and the mathematics are correct, but the counter-argument would be that there are difficult-to-quantify factors not impounded in the mathematical margin of error—with exit polls, such factors would be clustering as well as selection and response biases—that account for much of the disparity pattern.<sup>112</sup> In meeting such arguments, even a very impressive probability number like one in some-odd billion can have limited value. Perhaps the exit pollsters simply screwed up.

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Thus (and, again, to oversimplify a bit), if a previous election required a 5% rightward exit poll adjustment in order to match the official vote count, that shift will be reflected in correspondingly shifted exit poll demographics (e.g., %R/%D), and it is those demographics that will find their way into the weighting of the *current* exit poll, pushing the current sample to the right and therefore the exit poll results to the right.

Accordingly, a red shift of x% in the previous election should, all else being equal, effectively *cover* a rig of x% in the current election by erasing the vote count vs. exit poll disparity that would otherwise have accrued. That is, if the current election is no more rigged than the previous one, it will appear, using the exit polls as baseline, *not to have been rigged at all*. It will be crucial to bear this in mind when discussing the issues that have been raised regarding the E2016 exit polls (see Chapter V, note 30).

<sup>112</sup> Analysts attempt to incorporate such semi-quantifiable factors in a measure called Total Survey Error (TSE). While the margin of error (MOE) of a sampling is a purely—and very simply calculated—mathematical measure of the range of proximity within which we can expect the sample (i.e., poll results) to fall relative to the whole (i.e., vote counts) a certain proportion (generally 95%) of the time, the TSE adds other potentially error-producing factors to the calculation. The TSE thus will generally exceed the MOE, though rarely, in well-conducted samplings, will it be more than a third to half again as great as the MOE. The red-flag red shifts of the computerized voting era have generally exceeded the TSEs as well as the MOEs of exit polls.

A second-order analysis finds a related series of contests with which to compare the red-flag series. In a sense we are looking at the disparity of disparities. A classic example presented itself in the presidential primaries of 2016. It is analyzed in greater detail in Chapter V, but the essence of it is that the Democratic primaries exhibited large and unidirectional exit poll-votecount disparities in state after state, while in the Republican primaries the exit polls were essentially spot-on. It becomes much harder to simply dismiss the exit pollsters as incompetent or their methodology as flawed when it performed brilliantly through a whole series of elections in one party's nomination battle but kept over-representing the vote of the same candidate in state after state in the other party's nomination battle. At the very least, such a second-order pattern raises the question of whether one set of contests was targeted for manipulation while the other set was left alone. Another example is the comparison of disparities between votecounts and polls interviewing the same set of respondents regarding competitive and noncompetitive contests. The noncompetitive contests, unlikely targets for manipulation, serve as a control.<sup>113</sup> When we find radically different patterns of disparities in a series of competitive versus noncompetitive contests, that is a glaring red flag that can't be explained away by exit poll skeptics.

All that being said, the debate over exit polls as absolute *proof* of votecount fraud is likely to remain inconclusive. Neither side is permitted access to the raw data (held to be the property of the pollster and its major network clients) that might be helpful in resolving the dispute.<sup>114</sup> Nor, in the final analysis, are exit polls, or any other form of indirect measurement, the *best evidence* of

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<sup>113</sup> See, e.g., Simon J, et al: *Fingerprints of Election Theft: Were Competitive Contests Targeted?* (2007), presented as Study III in Chapter VII.

<sup>114</sup> Two reasons have been given for withholding this data: reluctance to identify exit-pollled precincts out of concern that might give rise to an effort to influence voters at those sites; and protection of the confidentiality of respondents, which, it is claimed, could be compromised by a release of the raw data. Neither reason holds any water.

Regarding the first, if the pollsters return to the same set of precincts in successive elections, then any potential "influencers" will know, from simple observation, what precincts to target whether precinct-identifying raw data is released or not. If they change locations from one election to the next, then the post-election release of raw data will not tip anyone off for that or subsequent elections.

Regarding the second, forensic analysts have requested a *very limited* set of raw data: candidate preference responses and the most basic demographics (age, race, gender). There is *zero* risk that from such a data set, any of the respondents (who fill out exit poll questionnaires anonymously) could be individually identified.

When such specious reasons are given for the withholding of data, it should raise our level of suspicion about the actual reason.

voter intent and public will. But can we say that vote counts emerging from the fraud-inviting darkness of cyberspace are *better* evidence? The best evidence, *indeed the only truly reliable evidence*, resides on the voter-marked paper ballots (where such exist, and with chain of custody adequately safeguarded), and it is only from an examination of that evidence—i.e., a public and observable count and/or audit of those ballots—that a reliable numerical conclusion can be drawn about what, collectively, the voting public intended.

**Q: What about *Citizens United* and the influence of Big Money? Wouldn't that explain the recent and future electoral success of the Right?**

A: If, having set a goal of “perpetual rule,” you are going to rig a lot of elections over an extended period of time, at some point it will become noticeable that the pendulum isn’t swinging freely, that not only are *individual* election results “surprising” but far too many of these surprises are in the same direction and the overall *pattern* defies explanation. The pendulum is seen to swing, but oddly and off-center, as if there were a magnet hidden in the wings stage-right. We have at least flirted with that point in our politics: witness a parade of articles in the media straining to explain why, as one put it, “conservatives always win.”<sup>115</sup>

This is the hustler’s challenge: *figuring out the maximum that can be taken while keeping the mark in the game*. The smartest rigger would of course let the pendulum swing just enough to keep the game going. But the game becomes a whole lot easier if some blanket explanation can be found such that both individual election results and the whole pervasive pattern no longer seem so bizarre. This is where *Citizens United* and the Big Money factor come in: if it can be established as conventional wisdom that Big Money decides elections, the rigger’s tracks are effectively covered with the readily available glut of corporate cash that *Citizens United* has swept into the electoral game. It is, in fact, very difficult to correlate electoral results with expenditures when all other factors are controlled. In some instances, over-saturation of messaging can even antagonize voters and backfire. But it matters not that there is likely a powerful law of diminishing returns such that Big Money ultimately runs out of steam when it comes to buying/influencing voters. All that matters is the established *perception* that Big Money wins elections.

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<sup>115</sup> Brewer J: “The REAL Reason Conservatives Always Win,” Common Dreams (6/22/2012), at <https://www.commondreams.org/view/2012/06/22-12>.

Thus, in the critical Wisconsin Governor’s recall election early in 2012—where exit polls revealed a dead heat and also established that *virtually all voters had made their minds up well before the late surge of Big Money into the state*—the Republican Scott Walker’s “easy” seven-point victory was nonetheless credited by most pundits (David Brooks being a notable exception) to the 8-to-1 ratio of expenditure on Walker’s behalf relative to his Democratic opponent. Certainly *Citizens United* and the Big Money advantage of the Right can, *even where ineffective in fact*, provide good cover for rigged elections going forward. Though another explanation will have to be found for routs like E2014 (examined in Chapter IV), where the parties’ expenditures were all but equal.

**Q: Almost all airtime for hand-wringing has been devoted to the overt schemes to win elections—Big Money, voter suppression, gerrymandering, “Vote Wednesday” robocalls, etc. In discussing *Citizens United* just now, you seem to be suggesting that these are just red herrings. Could you clarify?**

A: If the minority is going to gain power in a democracy, and then hope to *retain* power in spite of rabidly pursuing policies that operate to the clear detriment of the majority, that minority is going to have to pull out all the stops.<sup>116</sup> Rove’s sought-after “permanent majority” (or even permanent gridlock—holding just enough power to permanently block the other side’s agenda and vision) requires an *array* of tactical gambits ranging from deceptive messaging, to corporate Super-PAC money inundation, to geo-cynical gerrymandering, to voter suppression (through a sub-array of tactics ranging from discriminatory Voter ID laws; to selectively scrubbing voter rolls; to closing and consolidating precincts in opponents’ territory; to caging<sup>117</sup> and other forms of voter intimidation; to targeted misinformation, both procedural, such as making “Vote Wednesday” robocalls and sending “Vote

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<sup>116</sup> Of course the smaller and more extreme the minority, the more suspect its electoral seizure and maintenance of political power. But a nation that counts its votes unobservably, and entrusts that counting process to partisan corporations, should not be surprised to discover that its obituaries for a radical and grossly unpopular splinter such as the Tea Party, a “washed-up” strategist like Karl Rove, or a candidate like Donald Trump were premature.

<sup>117</sup> Caging involves turning up at the polls with long lists of likely opposing voters and using them to challenge each individual’s right to vote. Generally, the result of such challenges, undertaken almost exclusively by right-wing operatives, is to force the voter to submit a “provisional” ballot, and the reality is that many, if not most, provisional ballots go uncounted. See generally, Palast G: *The Best Democracy Money Can Buy: A Tale of Billionaires & Ballot Bandits*; New York: Seven Stories Press, 2016; <https://www.amazon.com/dp/1609807758/ref>.

Wednesday” flyers to likely supporters of the candidate marked for defeat, and substantive, as in falsehoods about candidates records, scandals, statements).

Each of these tactics takes a heavy toll on what we would recognize as a fair and ethical electoral process and, to the extent that they are practiced primarily by the forces of the minority, all serve to reduce the electoral margin that, in a fair democracy, the majority would otherwise enjoy. I agree that they are all pernicious and they are all ugly. But they are more or less *overt* and also *limited* in their bottom-line effect. When we examine what this new century’s election outcomes would have been in the *absence* of the pervasive “red shift” (which, when exit poll-based, reflects the responses of *successful* voters and is therefore independent of at least the voter-suppression tactics), it tells us that all these overt tactics combined are insufficient to produce the magnetic-pendulum effect we have been experiencing, let alone Rove’s “permanent Republican majority.”

But what these ugly overt tactics *do* achieve is to narrow the prevailing majority-minority political gap sufficiently that the *covert* tactic of computerized rigging can deliver the electoral *coup de grace* while managing to pass the smell test. So it is almost certainly a case not of either-or but of both-and.<sup>118</sup>

The overt tactics also serve as a kind of misdirection, distracting would-be election integrity guardians from the decisive covert game. As a voter and election integrity advocate, I have been bombarded with literally hundreds of institutional emails and letters presenting frenzied alarms about *Citizens United*, voter ID, voter intimidation, gerrymandering, false-info robocalls and flyers, etc. Not one of these alerts and calls to remedial action is willing to contemplate a still darker possibility. None seem to have asked the obvious question: Is there really a bright ethical line between making “Vote Wednesday” robocalls to the supporters of the candidate targeted for defeat and simply taking the far more *efficient* approach of setting the zero-counters on, say, 50 memory cards to +100/-100, thereby undetectably shifting 10,000 net votes and stealing yet another seat in the United States House of Representatives or a key state legislature? Once the tactical means are

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<sup>118</sup> The history and working of these combined “strip and flip” tactics are well-presented in Bob Fittrakis and Harvey Wasserman’s *The Strip and Flip Selection of 2016: The Five Jim Crows & Electronic Election Theft*, CICJ Books, 2016, at <https://www.amazon.com/dp/B01GSJLW0I>.

embraced, the sky really is the limit—anything that can pass the stuffed-nose smell test.

And yet the ACLU, People for the American Way, and of course the Democratic Party (to pick on just a few of the many), recognize and decry the robocall exploits, while the yet more sinister prospect of computerized rigging is beyond the pale (*here*, though of course *not* in Russia, or Pakistan, or Peru, or Venezuela, or . . .) and hence entirely ignored. Since there is no contesting the manifest vulnerability, as established by experts in study after study, it must be the bright ethical line that so reassures these guardians of democracy—that is, *It Could Never Happen Here*. We are watching America fall victim to its own exceptionalism.

**Q: What does it take to know that an election has been honest, that the votes have been counted reasonably accurately given the large numbers involved?**

A: It takes an open, transparent, and observable process. And it must be “end-to-end.” There can’t be any point in the counting process where the magician disappears behind the curtain, even for a few seconds, because a few seconds is all it takes to change the outcome of an election inside a computer.

Apologists for the current computerized counting system will point to all the aspects of “openness:” how observers can be present at the polls; how the machines are “certified” and put through a sample ballot test at some point before the election; how, when opscans are used, all the actual ballots can be manually counted if there is any question; how with VVPAT (i.e., “paper-trail”) DREs the voter gets to see *a receipt!*

What they will conveniently leave out of that reassuring presentation are the crucial concealed passages along the pipeline, and the fact that *a system is only as transparent as its most concealed point:*

- A computer can without difficulty be programmed to pass any pre- or post-election test with flying colors and still shift votes at the time of the actual election.
- “Open source” code can be developed and archived, while alterations and substitutions are made to the code that does the actual ballot reading and counting.
- You can deploy an army of observers at the polling places and central tabulation locations and none of them will be able to see the actual count (or miscount) inside the computers.

- Where opscans are used, the reality is that the actual ballots are virtually *never* examined: mere citizens have no right to do so and candidates, where they might have such a right (and noting that it is generally made prohibitively expensive at precisely the stage at which candidates have emptied their campaign chests), are under enormous pressure not to exercise it, lest they be labeled “sore losers” and so torpedo their political futures.
- Certain states, following Florida’s lead, have gone even further and outright banned hand counting to verify the machine counts. “Recounts” consist of running the ballots through the same computers that counted them the first time or hitting the “re-run” switch on a DRE.
- Touchscreen (DRE) computers with so-called “paper trails” can easily be programmed to print a vote for “A” on the “receipt” while recording a vote for “B” in the official count, and these often-unreadable receipts for digitally cast votes are even less likely than actual voter-marked ballots to ever see the light of day.
- Where, as recently marketed in Georgia, paper ballots are created by ballot-marking devices (BMD) that generate a barcode (or any other format that the voter cannot easily read and verify) to then be read by a scanner, there is no way to verify either the accuracy or the authenticity of ballots; so the effect is the opposite of transparency, adding yet another layer of technology and yet another vector for fraud.<sup>119</sup>

An open and observable process would entail visible counting that could be witnessed by representatives of all candidates and the public at every stage. There would be, *as there once was*,<sup>120</sup> a “tabulation tree,” with the precinct counts observed directly and publicly posted, and the subsequent aggregations at the town, county, and state levels capable of being reconciled (the process is simple addition) from the lowest level to the highest.

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<sup>119</sup> Intense lobbying by public-interest advocates resulted in the tabling of this proposal, backed by ES&S and the Georgia secretary of state, a rare and most likely temporary victory for the election integrity side. Similar battles are looming in a number of other states.

<sup>120</sup> It is all too easy to forget that, as a nation, *we have done this before*—indeed, throughout most of our history. The fact that we have grown more populous does not much alter the equation, as the need for and supply of vote counters expand correlatively and *remain proportional*.

No observation or vigilance will ever insure a “perfect” count, but the minor inaccuracies, the “noise,” in the system will break evenly, only extremely rarely affecting electoral outcomes, and those so close that full recounts would be undertaken as a matter of course. Under an observable counting process there would be no opportunity to, in effect, perpetrate a rolling coup and steal a nation.

**Q: What about audits?**

A: Post-election audits, for the most part, constitute a well-intentioned effort to make vote counting quasi-observable by requiring a second count of a select portion of the computer-counted ballots for verification of the initial count. If it is well-designed, scrupulously executed, and mandates a hand count rather than simply running ballots through the computer a second time, an audit can expose a computerized fraud and thus can also operate as a powerful fraud deterrent.

The question naturally arises what level of risk a prospective election rigger will tolerate before deciding that stolen electoral victories are not worth the risk of exposure (leaving aside the matter of punishment, exposure would presumably result in reform to a much more secure system; i.e., “Tilt—Game Over”). Of course we know of no election riggers who have come forward to discuss their thought processes and calculations, but it is hard to imagine that an enterprise of such pitch and moment is undertaken without a rather fine-tuned rational calculation of risk and reward. Karl Rove has spoken of “perpetual rule” and a reward of that magnitude would seem to be worth a great expenditure of effort and resource as well as a certain amount of risk.

National-grade election riggers, however well-compensated financially or radical in their belief system, are nonetheless rational actors who can be deterred by high-risk threat of exposure but who also almost certainly have the resources and determination to find and exploit any path left deliberately or inadvertently open. For an audit protocol to be effective as a deterrent, it must set up risk-based roadblocks on all such paths.

Specifically, for an audit protocol to “work:”

- It must count enough ballots to have a decent mathematical chance of detecting any outcome-altering manipulation.

- The selection of such ballots must be random and not telegraphed in advance.
- Secure chain of custody of the ballots must be strictly maintained (i.e., they can't be left, as they so often are, stacked up in some unlocked storeroom, warehouse, or garage).
- The audit design must be sensitive enough to pick up deliberate manipulations and at the same time selective enough not to throw red flags at incidental “noise” in the system.
- Failed audits must lead, in a prescribed sequence, to deeper investigation and effective remedial action.

All these requirements are necessary and none of them are trivial. Consider for instance the logistical challenge of selecting the counts to be audited and then immediately proceeding with the audit without allowing any opportunity for the swapping out of ballots in locations now revealed to the riggers to be “hot.” In *practice* most of the audits we have thus far seen undertaken have failed on one or more of these counts.<sup>121</sup>

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<sup>121</sup> Perhaps most egregious was Ohio 2004, where precincts were cherry-picked with the guidance of the equipment vendors, who also provided “cheat sheets” to election administrators to help ensure that the audit counts would square with the official computer counts (see <http://www.thelandesreport.com/ConyersReport.htm> at p. 81). Recounts have also been plagued with such irregularities and are rife with opportunities to alter or swap ballots to erase evidence of computer mistabulation.

When ballots are counted in a recount, a days-later audit, or even on Election Night at central counting stations that require the ballots to be transported, continual public observation is lost and there is no way to be certain that the ballots being counted are the same ones as were cast. Counting outside the precinct (i.e., central tabulation), delayed audits, and recounts would all require a radical (and expensive) tightening of chain-of-custody protections to qualify as observable counts.

It remains an open question within the ranks of election integrity advocates to what extent a fully paper-based system with a mandated and robust audit protocol would provide sufficient public “observation” (albeit indirect) to meet the standard of observable counting. While robust audits, especially Risk-Limitation Audits conscientiously executed, could indeed serve as an effective deterrent to the rigging enterprise, we have seen in practice that audits often have been ineffectual or corrupted. That laxity would have to change dramatically.

It is vital to recognize that if the incentive to manipulate a vote count in order to capture or hold office is X, the incentive to *conceal* that manipulation in the very rare cases where a red flag has been raised and some sort of investigation has been undertaken is 1000X, orders of magnitude greater. At stake at that point is not merely the office in question but the threat of exposure of the entire fraudulent enterprise and the potential “death penalty” remedy of serious reform of the vote counting system to effectively end the man-behind-the-curtain, faith-based process that currently holds sway.

About half the states have adopted audit protocols of widely varying strength and efficacy.<sup>122</sup> Proposed federal audit legislation, most notably a bill introduced in 2007 by Rep. Rush Holt (D-NJ), was assailed for its weakness and in fact bitterly divided election integrity advocates between those who believed “half-a-loaf” incremental progress was the best to be hoped for and those who saw such “progress” as ineffective to stop rigging and falsely reassuring to boot. Some states have begun to experiment with a stronger protocol, known as a risk-limiting audit (RLA);<sup>123</sup> but, with two politically quixotic exceptions,<sup>124</sup> proposed federal legislation has reflected little sense of urgency when it comes to putting teeth into audits—either leaving it optional or setting dates well in the future (e.g., 2024) for their adoption.<sup>125</sup>

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<sup>122</sup> See Verified Voting Foundation, Rutgers Law School Newark Constitutional Litigation Clinic, Common Cause: “Counting Votes 2012: A State by State Look at Voting Technology Preparedness,” at [http://countingvotes.org/sites/default/files/CountingVotes2012\\_Final\\_August2012.pdf](http://countingvotes.org/sites/default/files/CountingVotes2012_Final_August2012.pdf) (pp. 14 -16 and *passim*).

<sup>123</sup> See, e.g., Colorado: <http://thehill.com/policy/cybersecurity/342352-colorado-hires-startup-to-help-audit-digital-election-results>.

<sup>124</sup> In the House, the “Secure America’s Future Elections” (SAFE) Act, H.R.1562, introduced by Rep. Mark Pocan (D-WI) in March 2017, (<https://www.congress.gov/bill/115th-congress/house-bill/1562/text#toc-HDF8667CF68F64384BF78E8610D057352>). In the Senate, the “Protecting American Votes and Elections” Act, S. 3049 (<https://www.govtrack.us/congress/bills/115/s3049>), just introduced by Ron Wyden (D-OR) and several liberal colleagues (NB the absence of a single Republican co-sponsor). Notably the prescribed audits apply to federal elections beginning with 2018. Either bill’s chances of passage in 2018 are, well, zero.

<sup>125</sup> I should mention here something about “citizen audits,” which have been undertaken at various times and with various degrees of sophistication to fill the vacuum left by governmental inaction.

The main problem when private entities offer a “parallel count” of votes, by inviting voters to fill out what amounts to a “copy ballot” to be manually and publicly counted, is that of response bias. Any response rate short of 100% opens the possibility that refusers were predominantly of one or another political persuasion—so no apples-to-apples percentage-vote comparison can carry much weight. On the other hand, a straight numerical comparison might well be of probative value in exposing fraud in the official count, in the case where more voters indicate a vote for “Candidate A” in the parallel election than were counted by the computers. Unless those voters were lying (and there is no incentive to do so), such evidence is rock solid.

While such “parallel election audits” can consist of simply a table with blank ballots and a collection box outside the polling place, the VeriCount system, a far more sophisticated and comprehensive process, relying on smartphones and blockchain technology, is now in the testing stage (see [www.democracycounts.org](http://www.democracycounts.org)). It is a promising approach, though its ultimate utility as an election protection protocol remains to be established.

My own position relative to audits has evolved over the years and is now one of support for well-designed audit protocols. Audits can be precinct-based (essentially checking the performance of individual opscans selected at random), or aggregate (comparing the audit count to the vote count for an entire contest). They can also be “flat” (a fixed percentage of ballots sampled) or “risk-limiting” (sampling, and expanding the sample, as necessary to produce an agreed-upon level of confidence that the vote count was accurate). The RLA, put forward by several statisticians,<sup>126</sup> is currently in vogue, so I will discuss its pros and cons first. The essence of the RLA is that the extent or magnitude of the audit varies in inverse proportion to the size of the first-count margin of victory in an election: closer finishes draw bigger audits.

The RLA has much to commend it and, if faithfully executed, is not by any means easy to thwart or evade. The essence of the RLA’s rationale is that it is harder to find and catch a tiny fish than a big one *and we don't really care about dead fish of any size*. A “dead fish” is any mistabulation that does *not* alter the outcome of an election. With all respect to the oft-repeated mantra “count every vote as cast,” that is not a realistic standard for major elections. Vote counting, like any other operation dealing with large numbers and multiple sub-operations, is *not a perfect process and 99.99 percent of the time does not have to be*. We can and are obliged to tolerate a mistabulated (or misinterpreted) vote here or there; machines and humans will not always see eye to eye on every single ballot.

*That is not, however, how elections are stolen*. We can't afford to get bogged down in disparities of one or two votes per thousand, unless the election outcome is exceedingly close and those disparities—assuming they were deliberate, cumulative, and unidirectional, and so did *not* cancel each other out—could make the difference.

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<sup>126</sup> I give particular credit here to Howard Stanislevic, Kathy Dopp, and Philip Stark, though many others have been involved in the application of risk-limitation principles to the vote count process. For a thorough discussion of auditing principles and pitfalls as well as the operation of various forms of RLA, see <https://www.stat.berkeley.edu/~stark/Preprints/RLAwhitepaper12.pdf>.

In 2006 my colleague Bruce O’Dell and I proposed an alternative approach, known as Universal Ballot Sampling (UBS), which entailed an observable human count of one of every ten ballots, wherever and however cast, making for a very simple and easily executed protocol and offering a very high level of precision for verifying machine counts (see [http://electiondefensealliance.org/files/New\\_UBS\\_811Update\\_061707.pdf](http://electiondefensealliance.org/files/New_UBS_811Update_061707.pdf)).

This is the "mindset" of the RLA. It grows more teeth, or drops more hooks, when the fish is both alive and small because those fish are harder to catch. If, for example, the official margin of a race is 40 points, for any rig to have been *outcome altering* it would have had to shift a net of 20 percent of the votes, or at least one vote out of every five, from the loser to the winner; in other words, a *lot* of votes, a big fish. That magnitude of disparity (between opscan readouts and the voter-marked ballots contained within) is quite a sore thumb and easy to catch with even a tiny (say 0.5 percent sample) audit, assuming the precincts to be audited are not telegraphed in advance.<sup>127</sup> Only if the margin is *close* could the theft of relatively *few* votes have altered the *outcome*: and that is when the RLA drops lots of hooks, so that even a small (but successful) rig is likely to be caught.

You don't *need* a big, labor- and capital-intensive audit for the vast majority of election contests; you don't need to waste resources in the name of elevating form over function. One can imagine how huge a selling point that last sentence is to every rational and budget-constrained election administrator out there. And isn't that where we're at now: trying to get effective protocols adopted soon or sooner, before it all becomes academic?

The theory of the RLA is sound and, as I have noted above, this audit approach has much to commend it.<sup>128</sup> Nonetheless, I have developed reservations about its performance "in the wild." Election Night, and the days after, present messy, often chaotic rather than laboratory or classroom, conditions. Ballots to be audited may, depending on the specific RLA protocol, have to be drawn from many different "piles" (or, if digital ballot images are used, files). If the audit is the "ballot sampling" species—that is, one that seeks to sample enough ballots for the jurisdiction as a whole to verify the margin of victory for each contest audited—those piles may also include absentee, mailed-in, and provisional ballots.

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<sup>127</sup> RLAs, as noted, can also rely on jurisdiction-wide samples. While this eliminates the danger of telegraphing precincts to be audited, it raises other pragmatic sampling challenges, as will be seen.

<sup>128</sup> For better or worse, the vast majority of U.S. elections remain winner-take-all contests. There are, however, a few critical elections that are proportional in nature, a very recent example being the 2016 presidential primaries where, even in a noncompetitive state, the difference between a margin of, say, 35% and 40% might translate to a difference in delegates awarded to each candidate. The RLA would likely be inappropriate to such elections and a flat percentage audit recommended instead.

The basic RLA protocol relies on a kind of “rolling” sample, where the auditors “keep going” until their results verify (or cannot verify) the outcome of a given contest. This means that, in an election with several or many contests to be audited, the sample size for each contest will be unique, as it will be determined by several factors, chief among which will be the machine-count margin of victory for that contest. That’s a lot of sampling and— notwithstanding the fact that the basic sampling protocol is rather cookbook— lots of ways to go wrong. Especially when we remind ourselves that the atmosphere for conducting such audits will, in many locations, be highly charged, partisan, and potentially contentious.

With these considerations in mind—and having observed some of the difficulties already encountered by states like Colorado and other venues now experimenting with RLAs—I set about developing an alternative protocol, a hybrid of the Flat audit and RLA approaches. My aim is to greatly simplify and routinize the real-world tasks while still retaining the teeth necessary to catch, and therefore deter, outcome-altering fraud.

The Flat-RLA Hybrid audit is presented more fully as Study VIII in Chapter VII, but its basic feature is a relatively small (1 percent) initial flat sampling of ballots. The all-important “escalation trigger,” which determines whether a given contest passes or fails (and is therefore subject to a full manual count), is set in advance at half the margin of victory. Thus, for example, if a given contest resulted in a vote-count margin of 60 – 40 percent, an audit result of anything “worse” than 55 – 45 percent would trigger the escalation. Not only is the math very simple with the Hybrid audit, but a *single initial sample* will suffice for all elections on the ballot to be audited, down to the state legislative level. The presentation in Chapter VII includes a variety of examples and explanations that demonstrate how the audit would work and why it would be an effective deterrent without generating confusion or conflict in the difficult real-world setting of Election Night.

Both the RLA and Hybrid approaches focus specifically on what matters about elections: outcomes that reflect the collective majority/plurality intent of the electorate. The challenge now is to respond to the prospect of a faith-based E2018 and E2020 with the urgency called for—to incorporate a serious and workable audit protocol, with plenty of teeth and no unnecessary fat, into state and federal legislation *now*, not in 2028 or a “pilot” program in 2024.

## Q: I take it that you see Internet Voting as a step in the wrong direction?

A: It should come as no surprise that most election integrity advocates view Internet Voting (“I.V.”) as an anathema, not merely a step but a giant leap in the wrong direction. It also should come as no surprise that, despite a few notable successes in beating it back, I.V. is spreading, having been adopted in one form or another in a growing number of venues.<sup>129</sup>

I.V.’s seductions are the usual ones of convenience, speed, budgetary savings, and increased turnout (though voters lacking internet access will obviously be put at a serious disadvantage)—all taken one step further. We have already seen how hard it is to say no to that package of goodies and, viewed through the same rose-colored glasses that gave us HAVA and computerized voting in the first place, I.V. presents itself as something of a no-brainer: a logical extension of our technological capacity, making the chores of voting and vote counting still easier and cheaper. Given that the vast majority of us do everything *else* online, you can just about *taste* the inevitability of I.V.

So why fight it? Because I.V. takes the fundamental hazard of *all* computerized voting—that we as citizens and voters haven’t a clue about what the programmer is doing with our votes—and adds to it a gilded invitation to *outside* interference, as it is by now a given that virtually *nothing* that runs on the internet is immune to hacking, manipulation, and surveillance.<sup>130</sup> I.V. drew a major security-based thumbs-down from the National Institute of Standards and Technology (NIST) in 2011<sup>131</sup> and white-hat hackers have had a field day

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<sup>129</sup> Internet voting had been adopted for at least some class of voters (e.g., absentee, military) in over 30 U.S. states or territories as of May 2014.

See <http://online.wsj.com/articles/pamela-smith-and-bruce-mcconnell-hack-the-vote-the-perils-of-the-online-ballot-box-1401317230?KEYWORDS=Hack+The+Vote>.

<sup>130</sup> It would be hard to dispute that whatever protection there *is* on the internet these days derives less from impenetrable firewalls and encryptions than from simple “safety-in-numbers.” There is so much data to steal and use, only so many sophisticated hackers, and only so much time, so that the odds that *your* little scrap of data will wind up in their clutches *and* that someone will find the time to use it nefariously are tolerably small. But of course this Russian-roulette mode of “protection” does not apply to intrinsically high-value targets such as election results. The hue and cry since 2016 is “The Russians are coming!” but it really could be anyone. Recall that, according to every purveyor of misinformation from Obama to Comey to the DHS, our elections are supposedly safe because the computers are *not* connected to the internet. Even though most of them, directly or indirectly, *are*.

<sup>131</sup> See <http://www.nist.gov/itl/vote/upload/NISTIR-7700-feb2011.pdf>.

demonstrating the flimsiness and easy penetrability of the security protocols of I.V. systems thought to be ready to roll.<sup>132</sup>

Nonetheless I believe that the fight against I.V. is less straightforward than some of my EI colleagues would have it. For one thing it is a delicate matter to oppose I.V. without seeming by inference to defend, or at least be resigned to, the woeful status quo (i.e., the opscans and DREs) that I.V. would be replacing. Drawn between I.V. and existing computerized voting, the line of battle slides still further away from our goal of an observable count.

It is also worth thinking about how the ridiculously insecure process of internet voting stacks up against the ridiculously insecure process of good old computerized voting. Two differences jump out at me. The first is that I.V. is a lot like what gangsters refer to as an “open city;” that is, given the ultimate vulnerability of all things internet, I.V. is something of a come-one-come-all cyber-arena, as opposed to the monopolistic fiefdom of a few partisan corporations dealing out discrete memory cards, to the programming of which they alone have access. The second is that, even to the casual observer, I.V. (unlike opscans and even DREs) is obviously and unmistakably *computerized* voting. The public will *get* what it is being asked to trust and every bigtime online hack headline, every CHANGE YOUR PASSWORD!!! alert, every chilling tale of identity theft, and every new revelation of surveillance-state snooping will chip away at that trust.<sup>133</sup> Embraced at first virtually without reservation, the internet environment and our safety in cyberspace are now objects of a growing queasiness, and there is no sign that full trust is likely to be restored any time soon.

The end result if I.V. is widely adopted? Who knows. But one can easily enough imagine a variety of I.V. meltdowns and disasters—ranging from intrinsic systemic glitches to white-hat hacks (“Mickey Mouse gets 4 billion votes!”) to foreign interference—that would sharply focus attention on the vulnerabilities

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<sup>132</sup> See, e.g., the work of Harri Hursti and Alex Halderman, detailed at notes 2 and 3 to this chapter.

<sup>133</sup> As an example, I had an experience last year that has become all too common: having placed an online order for a subscription to *The New York Times* at \$286.00 for a year, I received a receipt notifying me that I would be billed for \$286 + tax every *week*, or \$16,098.94 for the year (too much, I reasoned, for a paper that wouldn’t touch evidence of computerized election theft). It took a fair amount of wrestling with customer service to figure out how to undo this computer “glitch.” Of course, had 286 *votes* been magically transformed into 16,099 *votes* (or vice versa), there would have been no collective receipt to put anyone on notice to challenge or question the results.

not just of I.V. but of *all* computerized vote counting. I'm thinking here of the principle of judo, where the momentum of an opponent's over-reach is used against him. One can imagine a backlash to the disasters of I.V. carrying us all the way back to an observable counting process. Meanwhile I.V. elections would likely be cyber free-for-alls, more or less equal-opportunity rigging, and to my eyes even *that* absurdity would be something of an improvement over the current state of affairs, which, as we have seen, has been effectively one-sided.

I don't support internet voting. In fact, given the current and projected state of cyber-security, I am with my EI colleagues in thinking it is insane. But I also think that unless arguments made against I.V. nimbly pivot on public recognition of internet-related dangers to call *all* unobservable vote counting equally into question, we will, even if successful in blocking I.V., have done little more than to perpetuate an *equally insane* status quo.

**Q: What are “digital ballot images” and how might they be helpful in the quest to verify election results and deter or detect fraud?**

A: Most computerized voting equipment designed within the past few years, whether DRE or Opscan, creates an electronic file (think pdf or jpg) for each cast ballot, which can be read at a later date. These “digital ballot images” contain no indication of the voter's identity but do preserve an image of the ballot cast (in the case of opscans) or a completed template with the voter's choices (in the case of DREs). According to most experts, altering these files or the program that creates them to change the votes cast would require a far more sophisticated manipulation than, say, just flipping votes on a scanner or DRE's memory card or off-setting the “zero-counters” to shift votes wholesale—constituting, if not a complete roadblock, then at least a rather formidable speed bump. The idea, as is generally the case with election protection protocols, is to confront the would-be meddler with a more challenging task and a less appealing reward/risk ratio.

Thus there are some election integrity advocates who see in digital ballot images the potential for greatly increasing the transparency of our elections, by effectively crowd-sourcing the verification process. Because the images are digital files, once created they could be downloaded by anyone with a home computer who was interested in checking or auditing the official results for any given precinct or—using the power of crowd-sourcing—for the election as a whole. Somewhat labor-intensive perhaps, but a good deal less onerous than

counting the voter-marked ballots—and avoiding the problem that voter-marked ballots are off-limits to public inspection. Intrepid individuals or groups with a bit of tech savvy could create counting programs that would greatly speed up the digital ballot image “audit” process.

If all this is sounding a bit too neat and “mission accomplished” to have a place in this book, there are a couple of major catches. Yes, the newer computers are designed to create digital ballot images—but they are also designed to destroy them, as early as a millisecond after they are created and their votes counted. The computers are in fact equipped with an “On-Off” switch—set it to “On” and the images are preserved; set it to “Off” and they are destroyed. The switches are manned of course not by election integrity advocates but by election administrators under the command of counties and states. Care to guess what switch position the majority of them choose?

Election integrity advocates—championed in this particular crusade by John Brakey and Chris Sautter of AUDIT-USA<sup>134</sup>—have begun bringing suit to compel election administrators to preserve the ballot images, on the grounds that they are “election records,” which must be maintained under federal law (for federal elections) and the laws of many states.<sup>135</sup> Such a suit succeeded in Alabama court (prior to the Moore-Jones Senate election of December 2017), only to be overturned the morning of the election on appeal by the state to the Alabama Supreme Court. Apparently the court was persuaded that turning the switch to “On” was too burdensome for election administrators. Ohio Secretary of State John Husted is now fighting like hell to defeat AUDIT-USA’s and the Green Party gubernatorial candidate’s suit in the Ohio Supreme Court, claiming the secretary of state has no legal authority to require the counties to turn their digital ballot image switches on.<sup>136</sup>

I have made the point several times that the concealment of the vote counting process in the computerized era is a feature not a bug—the system has been designed for concealment, so it is not surprising that it fights like hell to avoid being unconcealed. For digital ballot images to become an effective verification

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<sup>134</sup> Americans United for Democracy, Integrity and Transparency in Elections, at <http://www.auditelectionsusa.org/>.

<sup>135</sup> See <https://www.alternet.org/election-03918/breakthrough-technology-will-count-election-results-never>.

<sup>136</sup> See <https://whowhatwhy.org/2018/05/07/ohio-goes-to-court-over-ballot-image-preservation/>; it is perhaps worth noting that all seven justices of the court are currently Republicans.

protocol—the equivalent of a public audit—is going to require the cooperation, voluntary or compelled, of the administrative caste. They will have to upgrade to capable equipment, turn the switches to “On,” make the files available for download and review, and take seriously reports of disparities in the counts. There is also the potential for a diffuse, or crowd-sourced, approach to wax chaotic or to itself be susceptible to “meddling” by entities seeking to disrupt and undermine the electoral process.<sup>137</sup>

So there are—with digital ballot images, as there are with HCPB and audit protocols—hurdles to be cleared and issues to be addressed. But the potential is there for a significant step toward election protection and a prying open of the black box.

**Q: Someone offers the following deal: an observable vote-count *and* photo-ID required to vote. Do you accept?**

A: In a heartbeat. Concern about the security and honesty of our upcoming elections may be one of the very few shared agendas bridging the great political divide in America today. According to a February 2018 NBCNews-SurveyMonkey poll, 79 percent of those surveyed believe that the country’s voting systems are vulnerable to hacking.<sup>138</sup> Couple that with the 69 percent of Trump supporters that, in a Washington Post-ABC News poll before the 2016 election, believed that “voter fraud” occurs “very or somewhat often,”<sup>139</sup> and you have a major trust problem when it comes to the most basic protocol of our democracy.

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<sup>137</sup> For an example of the trade-offs involved, consider Chicago, where Cook County Director of Elections Noah Praetz publicly supports the publication of digital ballot images—but only after administrators have scrubbed them of all “extraneous marks.” The professed rationale for the pre-post scrubbing is to remove any markings that could tie the ballot to an identified voter and so undermine secret-ballot principles. Fair enough—but such scrubbing also presents administrators with an opportunity to “scrub” (or alter) as many *votes* as needed to make the digital ballot count agree with the computer count. This possibility is hardly far-fetched in light of what is known about the cheat-sheeting of Ohio recounts in 2004. If the decision of what is a “vote” and what is an “extraneous mark” is to be made in private by an administrator or technician, it merely succeeds in replacing one kind of “trust us” election with another, keeping a crucial step in the verification process concealed from the public.

<sup>138</sup> See <https://www.nbcnews.com/politics/politics-news/poll-most-americans-think-russia-will-interfere-again-2018-elections-n845076>.

<sup>139</sup> See [https://www.washingtonpost.com/news/the-fix/wp/2016/09/15/poll-nearly-half-of-americans-say-voter-fraud-occurs-often/?utm\\_term=.3c2973235dfb](https://www.washingtonpost.com/news/the-fix/wp/2016/09/15/poll-nearly-half-of-americans-say-voter-fraud-occurs-often/?utm_term=.3c2973235dfb).

Of course, these are two very different worries. The president and his base envision hordes of “illegal” voters crashing the polls to cast their ballots against him and his political affiliates. Many continue to believe, with Trump,<sup>140</sup> that millions of such voters cost him his coveted popular vote victory in November 2016. On the other hand, at least as many voters worry that it’s not illegal voters but a vulnerable *counting* process that threatens to undermine our democracy and alter the direction of our nation.

Without revisiting the evidence for and merits of each belief, I am here simply acknowledging that a government that rests on perceived legitimacy now depends on an electoral system that is in trouble. I would be the first to propose, and would certainly accept, an approach to this looming crisis that Donald Trump—the artist—might embrace: a deal. We can move quickly to address *both* bases for burgeoning distrust in our elections.

Why *not* consider an omnibus approach that includes both a requirement for photo-ID at the polls *and* a requirement that ballots be cast on paper and either counted manually or subject to uniform, public audit prior to certification?<sup>141</sup>

Details of course matter and can have powerful partisan impact. So it would, for example, be necessary to ensure that obtaining the required ID be facilitated rather than burdened with bureaucratic and administrative hurdles set up to discriminate against any age, race, or class of voter.<sup>142</sup> And it would likewise be necessary to provide sufficient blueprints and funds for hand-counts to be undertaken or audits conducted without undue compromise of their design.

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<sup>140</sup> See <https://www.usatoday.com/story/news/politics/onpolitics/2017/01/23/president-trump-illegal-ballots-popular-vote-hillary-clinton/96976246/>; see also <https://www.npr.org/2018/04/05/599868312/fact-check-trump-repeats-voter-fraud-claim-about-california>.

<sup>141</sup> It is clear that Congress would have the power to legislate both ends of the deal for federal elections. Principles of federalism might render its further application to elections for state offices problematic, such that the deal would have to be replicated on a state by state basis—though a national voter-ID card has in fact been proposed and, if federal control of that aspect of state election processes passed muster, it would be hard to argue that the counting aspect was off-limits to federal legislation.

<sup>142</sup> See <http://www.newsweek.com/voter-id-laws-discriminatory-disenfranchise-485708>. There are also civil-liberties concerns associated with any national ID proposal. Therefore the permissible forms of ID would, like state-issued driver’s licenses and non-driver alternatives, have to be narrowly tailored to contain only such information as was needed to establish identity and residence.

But the basic idea would be to button up both ends of an electoral process practically everyone now regards as vulnerable to one or another species of fraud. And to do it without further delay, in time for the critical 2018 and 2020 elections. If each “side” wants its grave concern addressed—even if it thinks the other side’s concern is overblown hooey—each should embrace this deal enthusiastically. There is, after all, nothing wrong with an election that turns out to be *too* secure.

Yes, it will cost a bit of money, require some work. We have tried to have our democracy on the cheap (while pouring trillions into wars and occupations to foster “democracy” abroad)<sup>143</sup> and it has come back to haunt us. It is time to pony up a bit for the security of *our* elections—whether one sees Russians, other operatives with access to the cyberspace in which our votes are counted, or undetected illegal or multiple voters as the principal threat to that security.

**Q: Given the Snowden revelations about NSA surveillance, along with other signs that American democracy is deteriorating irrespective of which party governs, would an honest vote counting system even matter anymore?**

A: There was a brief glimpse during the Occupy movement of what public anger at American Systemic Injustice might come to if it found a way to assemble, to come out of its isolated private homes and apartments and shelters and cubicles into the public squares of the nation. It was a powerful image, and one that so shook America’s rulers in their corporate and governmental corridors of power that they soon resorted to a federally-coordinated blitzkrieg to empty those squares and kill Occupy before it multiplied any further and before the Bastille was in any real danger.

One of the most important takeaways from the Occupy experience is the recognition of a previously hidden divide in the American body politic: that of the “99 Percent” and the “1 Percent.” Throughout American history our enduring system of representative democracy has thrived on the two-party dialectic. Certainly for living generations, the vision we have of politics is that of the Democratic and Republican parties carrying the ark into battle for their relatively evenly matched constituencies, taking turns holding sway and advancing an agenda as the political pendulum swung.

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<sup>143</sup> See <http://money.cnn.com/2017/08/21/news/economy/war-costs-afghanistan/index.html>.

That is still the image of American politics you'll see in *The New York Times* or on CNN: another sporting event really, presenting two venerable teams perennially butting heads somewhere around the 50-yard line, a never-ending political Super Bowl. It is easy enough, if you listen to the play-by-play announcers, not to notice a very important change in the game, a tectonic realignment of which Occupy began to give us a hint and which subsequent developments have confirmed. The battle that is coming to characterize The New American Century is that between the *Elites* (called “the One Percent” by Occupy, but more accurately the corporate class that would replace real democracy with its trappings, masking dominion) and *Everyone Else*. And this battle, as the ‘treasonous’ Edward Snowden brought so dramatically to our attention, is largely about *information*.

Knowledge is indeed power: in the case of the surveillance state, the power to intimidate, the power indeed to blackmail, the power to infiltrate and sabotage any perceived threat, stifle any organized or ultimately individual dissent. And the battle lines are indeed simple: a ruling elite, corporate and governmental, that is attempting to know as much as possible about you and me while seeing to it that we know as little as possible about them.<sup>144</sup> Of course this is not unprecedented; history offers up its share of J. Edgar Hoovers. But the Information Age has turned a limited and rather selective battle into what amounts to *total war*, whether or not it is yet universally recognized as such. In a very real sense, in this war not over land or even treasure but over knowledge, *The Public* has become *The Enemy*.

The weapon that has been handing the ruling elites one victory after another in this war is *fear*, specifically fear of “terrorism” (though as an American you were several thousand times as likely to be killed by an ordinary American with a gun last year as by a global terrorist), now broadened to fear of immigrants and the “other.” With the ghastly and iconic images of planes puncturing towers and bodies leaping from fiery windows—precisely the “new Pearl Harbor” imagined in 1997 by right-wing think tank PNAC<sup>145</sup>—seared into every

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<sup>144</sup> At this writing, the Cambridge Analytica-Facebook scandal has emerged to shed a lurid light on the virtual obliteration of privacy fashioned by the social media behemoths, whose business models have essentially commodified the public. The “battle” thus far has been a rout.

<sup>145</sup> The Project for the New American Century (PNAC), a non-profit organization founded in 1997 by prominent Republican leaders, called for a transformation of America to exercise military total-spectrum dominance and unchallenged worldwide hegemony. The PNAC program in a nutshell: America's military must rule out even the possibility of a serious global or regional challenger anywhere in the world.

American's brain, and with Iraq War-incubated ISIS and its various progeny, real and imagined, reanimating those memories on a regular basis, the surrender of privacy on every front becomes an easy sell. *Whatever it takes* to keep us mythically "safe" in a "war" rather brilliantly conjured to be without end.

Naturally the National Security Agency was not about to let *us* in on its various "legal"<sup>146</sup> spying schemes<sup>147</sup> and, when finally exposed by the treasonous Snowden, took great pains to reassure us that it was "only gathering data" and won't actually read our emails and listen in on our phone calls *unless it really feels it needs to*. For example if you were trying to organize the next Occupy movement, or threatening the "eco-terrorism" of opposing Monsanto, getting serious about a third-party or independent challenge to the D-R power duopoly, or perhaps organizing to "liberate" our ballots from their opscans so that they could be counted observably in public.

This is the *bone structure* of The New American Century, whatever its face and skin may look like. Corporate America has a stranglehold on *both* major parties; the corporate-owned MSM is cheerfully along for the ride; threatening opposition movements like Occupy are infiltrated and, where necessary, obliterated. Where does that leave The People? Where does that leave the 99 Percent on the day it figures out they *are* the 99 Percent?

*It leaves us with the electoral process.* With the chance—in a fair, observably counted election—to elect to office candidates outside the power duopoly, who have refused to feed at the corporate trough, and who are pledged to

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PNAC's most important study noted that selling this plan to the American people would likely take *a long time*, "absent some catastrophic catalyzing event like a new Pearl Harbor," (PNAC, *Rebuilding America's Defenses*, 1997, p.51); see also [https://en.wikipedia.org/wiki/Project\\_for\\_the\\_New\\_American\\_Century](https://en.wikipedia.org/wiki/Project_for_the_New_American_Century).

<sup>146</sup> Apologists from both parties were quick to point out that a special (secret) court, the FISA Court, must approve NSA applications to tap your phone or email. In 2012 there were 1896 such applications, of which the FISA Court approved 1896. And they said DiMaggio's hit streak would never be broken!

<sup>147</sup> President Obama proudly dubbed the NSA activities "transparent." While Glen Greenwald's publication in *The Guardian* of Edward Snowden's leaked NSA documents was certainly a step in that direction, it is hardly one for which the former president, who had attempted to prosecute Snowden on charges of espionage or treason, could gracefully take credit.

bringing genuine change to the system and seriously addressing American Systemic Injustice.<sup>148</sup>

Of course there are other obstacles beside rigged vote counts: money, media, lies, infiltration, assassination. But at least there would be a fighter's chance! Money faces a law of diminishing returns when it is spent in obscene amounts to buy votes and elections; there are means of communicating messages outside the mainstream media; lies can be exposed, infiltration, threats, and even assassination overcome—as we have seen elsewhere around the world and throughout history—when a cause is just and vital and when the forces of greed, repression and control have overplayed their hand. In primaries and in independent challenges, candidates with the courage to oppose the forces of wealth and injustice smothering our democracy could stand for election before an electorate that the ruling elite had finally pushed too far.

At that point we had better be counting the votes *in public view*.<sup>149</sup> It is absurdly naive to believe that the corporate totalitarians, who hardly blanch at subverting every *other* mechanism of democracy, would, with their own computers counting the votes in secret, go gentle into the good electoral night.

It would be easy to lose sight of this Information Age realignment amidst the many calamities and challenges of the Age of Trump. Certainly, for all Trump's unorthodoxy, American politics right now does look, on the surface at least, a lot more like the old "Super Bowl" model: two teams battling it out in a nation divided, more starkly than ever, red and blue. But that is because Trump, demagogue that he is, presented a big swath of America, for whom politics had ceased to work, with seeming hope and the illusion of an answer. And because he, his behavior, and his policies are so repulsive to so many and so polarizing that he has personally (with the help of his all-in GOP backers) done what Occupy (cut off at the knees as it was) could not: given birth to a serious, angry, and tenacious resistance. So the two halves of the 99 Percent were split and now face each other, Super-Bowl style, as if their interests were diametrically opposed—a state of affairs always welcome to the One Percent, as it cancels or at least forestalls their day of reckoning.

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<sup>148</sup> To see what lies in wait for such a candidate in our current electoral circus, look no farther than Chapter V and the forensic story of the 2016 Democratic primaries.

<sup>149</sup> It goes without saying that in 2016 we were *not* counting the votes in public view.

One great irony—and there are many—is that just about the most gilded and contemptuous One-Percenter imaginable went after, lied to, and won over enough of the 99 Percent to take—with the help of various thumbs, as we shall soon see—power. Another great irony is that most Trump voters were *already on the winning side* of the political game: they had elected (again with the help of various thumbs) not just Republican but further and further right Republican majorities to Congress and to their state governments. They had the power to keep Merrick Garland off the Supreme Court *before* Trump’s ascension. They had the power to beat back any and all threats to “take their guns away.” They had the power to legislate, block legislation, cut state taxes and benefits, and turn President Obama into, from the progressive point of view, a political eunuch.<sup>150</sup> Nonetheless they were angry, economically screwed, and felt forgotten, unheard—and they were ripe for a bullshit artist posing as their friend and savior to win them over with the utterly false promise of “draining the swamp,” tearing it all down. It seems that our corrupted electoral process had not been responding to *anybody*.

We are suffering from a virulent disease and will need strong medicine. *But let no one say it’s all so rotten that elections no longer matter—or that politics itself is now so revolting and hopeless that it too no longer matters.* Because after elections and politics all that is left is revolution (or Soviet-style resignation) and, even if we could imagine one here in the Land of Genetically Modified Milk and Honey, such events are not ordinarily festive but chaotic and traumatic. Indeed, it was memories of such traumas that likely gave birth to history’s *first* elections. So let us neither mistake the lines of battle nor fail to recognize the crucial part electoral integrity—*beginning with the observable counting of votes*—is destined to play in an age in which the critical lines of battle are all about what can be seen and what cannot.

**Q: Would you say that progress has been made in the years you have advocated for election integrity and reform of the vote-counting process?**

A: Yes. And no. If you call decline in trust in the electoral process “progress,” then we are clearly in a “better” place now than we were 16 years ago when the Help America Vote Act was passed and the fully computerized voting era began, with barely a thought given to the safety and advisability of

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<sup>150</sup> It is telling that Obama’s signature achievement, Obamacare, was rooted in a Republican plan first introduced by Mitt Romney when he was governor of Massachusetts. From 2010 forward, no truly progressive measures or appointments had a chance of emerging from the Republican-controlled Congress.

computerizing the casting and counting of votes. Some of that decline in trust can be attributed to the efforts of electoral integrity advocates and forensic analysts, but much of it has sprung from the evidence-free rantings of Donald Trump and his echo chamber, and much too from a recent fixation on “Russian” meddling that perversely ignores the mountains of evidence from the decade and a half *before* anyone has suggested the Russians took an interest. And perhaps some of the decline in trust, some of the concern that we may in fact have a problem, stems simply from gross discontent and suspicion across the political spectrum, itself at least in part a side-effect of the breakdown of an electoral process.

But I do think that awareness of vulnerability to fraud involving computers in general and vote-counting computers in particular has gradually infused the national consciousness. It just has not yet been treated as a national crisis demanding full and urgent remedy. This is because—to the political establishment, the media, and most of the populace—the crisis of election theft remains hypothetical, a *possibility*. The evidence of actual manipulation of votecounts has been gathered and analyzed *ad nauseam*, then ignored or dismissed as conspiracy “theory” by the government and media alike. After all, such evidence would undermine voter confidence in the electoral process!

Some of the deepest and most damning work in election forensics was done at the *beginning* of the computerized voting era, in the wake of E2004. Much, though not all, of that work was presented in Steve Freeman and Joel Bleifuss’ book *Was the 2004 Presidential Election Stolen?* It was based on time-stamped, unadjusted exit poll data I had downloaded and printed out; on a detailed, comprehensive, but evasive analysis conducted by the Edison-Mitofsky exit-polling firm into its own “errors;” on examination of the bizarre timeline and events of Election Night, including the shutdown of the Ohio state election servers and the peripatetic interstate “itinerary” of the votes that produced the Bush victory; and above all on analysis of numerical patterns that fit no conceivable benign explanation of the anomalies that emerged.<sup>151</sup>

I challenge anyone who picks up and reads that book to write it all off as “conspiracy theory.” After E2006 I contributed the first two of a series of

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<sup>151</sup> See Freeman, Steven F.; Bleifuss, Joel: *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count*, Seven Stories Press 2006, at <https://www.amazon.com/Was-2004-Presidential-Election-Stolen/dp/1583226877/ref>.

analyses,<sup>152</sup> regarding which I issue the same challenge. Many other examinations, ranging from the highly specific to comprehensive meta-analyses, have been undertaken. Together they constitute a data- and evidence-intensive body of work that can leave little doubt that the crisis of election theft In America is *not* hypothetical.

Today—although we are dealing with a cutback to exit polling,<sup>153</sup> a baseline-corrupting partial adjustment of first-posted exit polls, a general skepticism of all polling, and the continued withholding of all “hard” evidence like memory cards, code, and voter-marked ballots—we soldier on collecting and analyzing data for what light it can shed on what is going on in the partisan, proprietary, pitch-dark of cyberspace. The data from such recent elections as GA-6 and Alabama Senate has been remarkable, and the analyses continue to raise red flags.

If we take as our measure of progress the impact of that work on the bottom-line security of the vote counting process, we’ve gone just about nowhere. If we consider instead the growth of awareness, suspicion, and concern that concealed vote-counting is problematic and votecounts cannot be presumed gospel, then things are sort of moving along. There is something of a push for “paper;”<sup>154</sup> there is talk about digital ballot images and audits; there has been

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<sup>152</sup> See Chapter VII, Studies II and III: “Landslide Denied: Exit Polls vs. Vote Count 2006, Demographic Validity of the National Exit Poll and the Corruption of the Official Vote Count” (2007) and “Fingerprints of Election Theft: Were Competitive Contests Targeted?” (2007). It should be noted that neither study was grounded on a face-value assumption of exit poll accuracy.

<sup>153</sup> For example, the elimination of 19 states from exit polling in 2012, 22 states in 2016, and the cancellation of the final five crucial exit polls in the 2016 primaries.

<sup>154</sup> Gordon Lightfoot might have been thinking of election integrity activism when he penned the line “feel like I’m winnin’ when I’m losin’ again,” and the current movement from DREs to BMDs serves as a classic example.

The vendors’ new bright idea is to replace touchscreen voting machines (DREs) with touchscreen ballot-marking devices (BMDs) and proclaim a major victory for election security and integrity: “We have paper!” But those BMDs, in most cases, are designed to print a *bar code* on that paper representing the voter’s choices. A bar code! That code is then read by the optical scanner that counts the votes—but it certainly can *not* be read by the voter who cast the vote. If you are wondering how a humanly unreadable and unverifiable bar code on a piece of paper improves election security and prevents computerized fraud, stand at the head of the class.

A few rather obvious questions: How difficult is it to gin up a stack of pre-printed bar-code ballots and feed them into the scanner? How difficult would it be to print a vote for “A” in human-readable language on the ballot and a vote for “B” in the barcode that is read by the scanner? And if the BMD breaks down—as touchscreens are famous for doing—what happens to the voters in line, who now can’t vote? There is no such

money (albeit a relative pittance) appropriated for equipment upgrades; there is something close to consensus that the Russians have come and are coming again; and potential nonacceptance of shocking, or even disappointing, electoral results seems to be in the air—a frightening state of affairs, but an apparently essential precursor to serious reform.

But we have come a long way down the computerized elections road without even tapping the brakes, let alone executing a stomp and steer. Much damage has been done to our nation and our democracy; authoritarianism is no longer unthinkable here—there are several scenarios and vectors headed in that direction. So if there has been progress, it pales before the task at hand—what needed to be done and what remains to be done.

**Q: What *can* be done? Is there any real prospect of observable and honest elections in the United States?**

A: Democracy, contrary to the facile assumptions of those born into it and apt to take both its blessings and its workings for granted, is no sure thing. While political evolution in the modern era had seemed to be inexorably bringing democracy of one sort or another to more and more of the world, the countercurrents—both historical (Hitler, Stalin, Franco, Pinochet, *et al*) and contemporary (Russia, China, Egypt, etc.)—are very strong and have certainly not ceded the field. Indeed the current trend across much of the globe is a retreat toward what has been euphemistically called “managed democracy,” which is to say something that still looks more or less like a democracy (people get to vote) but ain’t (challengers to the ruling oligarchy or autocrat have no chance of winning).

Power, always seeking consolidation and control, has a way of finding the chinks, slipping in the explosives and blowing democracies and genuinely representative governance up. Or, more subtly and patiently, slow-dripping its acid onto the scaffolding that holds democracy upright. We’ve seen in America the metastasis of the security state, the infiltration of big money into politics, the consolidation of the mainstream media under control of a handful of corporations, and finally the ascension to power of a president with

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problem when voters hand-mark their ballots, even when counted by opscan—20 or 30 voters can be filling out their ballots at once. Yet these new gizmos are selling like hotcakes to counties and states that have pledged to “upgrade” their election security (see <https://twitter.com/jennycohn1/status/991406567097483264> for an account; see also <http://bradblog.com/?p=12505>). “Sometimes I think it’s a sin . . .”

authoritarian instincts and little regard for the rule of law. All these developments make America *look* less democratic.<sup>155</sup> The process may not be explosive, like a coup, but it is visibly erosive.

Election theft is different in that it allows its perpetrators to keep "democracy" perfectly intact and *looking* like a democracy even after it's been effectively gutted. Election theft is also something that very few Americans of our time ever thought they'd have to worry about, and something that they'd still very much rather not worry about (as it goes against every premise of positive national identity and esteem), especially if they have a seat at or anywhere near the power table. So we are in a very dark and dangerous place and facing an historic tragedy in the making.

It is not unrealistic to imagine systemic election rigging giving rise to a politics so one-sided or so out of sync with the public will that eventually the inkling that something is very wrong with the whole picture becomes irrepressible.

It is also possible to imagine something ultimately more damning: a carefully titrated rigging strategy that would preserve, perhaps indefinitely, the *illusions* of a freely swinging pendulum and of public sovereignty.

And finally it is not wholly inconceivable that a hidden game of rigging, thwarting, and counter-rigging—a kind of domestic electoral equivalent of the spy-thriller antics of the Cold War—will come to characterize our best-in-class, Made-in-the-USA model of democracy.

It is not yet entirely clear which it will be, though it is becoming clearer. As we will now proceed to examine, the elections of 2010, 2012, 2014, and 2016, taken together, shed a good deal of light on how the electoral computer game is likely to be played as we move further into the New American Century.

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<sup>155</sup> While there is hope among some, expectation among others, that our democracy will ultimately hold Trump in check, America does seem to be in uncharted territory with the outcome very much on the hazard and very much dependent, the existence of a vibrant resistance notwithstanding, on the outcomes of our next two national elections.

## E2010 and E2012: A PATTERN EMERGES

*The truth will set you free, but first it will piss you off.*

— Gloria Steinem

Obama won. Twice. It *must* be safe to go back in the water. The outcome of E2012 proved, if E2008 had left any doubt, that votes are counted honestly and accurately in the United States. Even if electronic rigging is theoretically possible, E2012 provided blanket assurance that it is just not something that anyone—no matter how bent on winning, no matter how in thrall to some agenda, ideology, or worldview—would *do*. Whew! What a relief that we wouldn't have to worry about this anymore or deal with the massive burdens of observable counting or even serious audits! It's all good.

Or was it?

Tellingly, the reason that Democratic victories dispel concerns about election theft is that the forensic indicators, election after election, are so pervasively one-sided that grounds for suspicion of *leftward* rigging are nonexistent. So a Democratic win, in a competitive election of national significance, would reassure the only partisans with a standing reason to be concerned (until Trump came along, as we shall see), that the game was fair, the pendulum free to swing. A purblind but understandable reaction.

On Election Night 2008, it seemed that all but the most cynical partisans of the left took time out to watch the Obama victory celebration in Grant Square, many to join in. But the election forensics crew stayed glued to their computers, doggedly screencapturing, downloading, and spreadsheeting—focused on the process rather than the outcome. Having seen all the indicators in 2004, 2006, and 2008 (when, Obama's victory notwithstanding, the red shift was even more egregious than in the prior two elections), we were then not at all surprised by E2010, when the Tea Party swept in, Democrats and Republican

moderates were sent packing, and what promised to be an enduring occupation of both federal and key state governments was installed by those same red-shifted vote counts that had somehow escaped general notice two years earlier in 2008—when they weren't red-shifted *enough* to overcome a free-fall brought on by the 11<sup>th</sup>-hour crash of the economy on Bush's watch and keep Obama out of the White House. Who else, in December 2008, saw E2010 coming? Who, in December 2012, was thinking E2014? Who was paying attention to the emerging pattern, watching the pendulum's weirdly distorted, precessional swing?

Who understood that a corrupted voting system does not equate with every election being successfully rigged?

Obviously, not every election contest is targeted for manipulation: some are relatively unimportant, without sufficient national significance; some are too one-sided to reverse without provoking undue suspicion; some rigs may be under-calibrated considering subsequent political developments; and still others may be deterred or thwarted in the darkness of cyberspace. There is strong reason to believe that it is this last fate that befell the attempted manipulation of the 2012 presidential race.

Looking at E2012 overall, while the Democrats took what were regarded as the major in-play prizes of the White House and Senate (adding to their narrow majority in the latter), the Republicans maintained a solid grip on the U.S. House (despite Congressional approval ratings hovering in the single digits and despite an overall Democratic victory in the national popular vote for the House<sup>1</sup>), as well as on a sizeable majority of statehouses. In effect, though the election was initially depicted as a pendulum-swinging repudiation of both extreme right-wing politics and the impact of vast corporate and Super-PAC expenditures on voter choice, *little if anything changed in the actual political infrastructure as a result of E2012.*

It is also worth noting that—much as in E2008, when McCain was sunk by the market crash and having Sarah Palin foisted on him as his running-mate—it required a dismal campaign run by a feckless, tone-deaf, and lackluster Mitt Romney trying desperately and all-too-transparently to “Etch-A-Sketch” away an indelible impression of extremism left over from his self-styled “severely

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<sup>1</sup> It was only the fourth occurrence of this win-the-vote-lose-the-House phenomenon in over 100 years, the others involving outsized Democratic margins in what was then the “solid South.”

conservative” primary season—not to mention a series of gaffes by GOP Senate candidates ranging from the seriously injurious to the instantly fatal—to bring about even this tepid electoral result that did little more than maintain the status quo, leaving a leadership class still jarringly out of tune with an American electorate that had *just voted*.

### **So What Happened?**

It does sound like the stuff of spy novels,<sup>2</sup> but there is good reason to believe that a planned manipulation of the presidential vote was blocked in cyberspace on Election Night 2012. The would-be rig that appeared to have been thwarted on Election Night was of the “real-time” variety (i.e., a “man-in-the-middle” attack<sup>3</sup>), but it remains unclear whether or to what extent a pre-set rig (i.e., one programmed into memory cards installed prior to Election Day) may have affected the outcomes of down-ballot (e.g., U.S. House and state-level) elections, critical to the overall political power balance but not exit-pollled.

### **Not Over Till Karl Rove Sings**

One of the weirdest indications of submerged 2012 Election Night drama was the infamous public “meltdown” of Karl Rove, star of the FOX News Election Night coverage team, as he stubbornly persisted in challenging *his own network’s* call of Ohio and the presidency for Obama, citing a rapidly closing gap between the candidates that did not jibe with *any* publicly reported returns.<sup>4</sup> Of course millions of votes *were* being tabulated on remote networked servers, including many from key swing states such as Ohio. This method of vote “processing” permits vote-count manipulation in “real time” calibrated to suit, and a shift of fewer than 170,000 *total* votes among the states of Ohio, Florida, Virginia, and New Hampshire would have reversed the Electoral College outcome and put Romney in the White House.

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<sup>2</sup> Indeed, there are at least two good ones of recent vintage: *The Lafayette Campaign: A Tale of Deception and Elections*, by Andrew Updegrave, an attorney with thirty years’ experience servicing hi-tech clients, at [www.amazon.com/dp/0996491910/ref](http://www.amazon.com/dp/0996491910/ref); and *Cassandra, Chanting: An Election Insider’s Nightmare*, by a former voting industry insider who chose to remain anonymous, at [www.amazon.com/dp/1434353230/ref](http://www.amazon.com/dp/1434353230/ref).

<sup>3</sup> A man-in-the-middle attack involves the interception and alteration of digitized data in the process of storage or transmission; see, e.g., [http://www.rawstory.com/news/2008/Republican\\_IT\\_consultant\\_subpoenaed\\_in\\_case\\_0929.html](http://www.rawstory.com/news/2008/Republican_IT_consultant_subpoenaed_in_case_0929.html)

<sup>4</sup> See, e.g., <https://www.youtube.com/watch?v=rKqQBvWeO6E>; see also Pema Levy, “The Real Reason Why Rove Went Into Denial On Election Night,” *Newsweek*, 1/21/14, at <http://www.newsweek.com/real-reason-why-rove-went-denial-election-night-226695>.

In disputing his fellow right-wingers on the FOX broadcast, Rove made reference to *server issues*, eerily reminiscent of the parallel scenario in E2004, in which Rove “IT guru” Mike Connell’s SmarTech operation took over the official Ohio elections website at about the same late hour of the evening and Bush suddenly surged ahead as the “late” votes came in.<sup>5</sup> So, if in fact he had reason to believe that a repeat performance was on the program and those necessary votes could be ginned up in cyberspace, Rove’s insistence was not quite as absurd as it seemed.

Rove—a brilliant, disciplined, and careful calculator never prone to such humiliations—so clearly and publicly expected a different result, and seemed so clearly and publicly to be counting on something happening that did not happen, that it begs the questions “What?” and “Why didn’t it?”

And indeed, the group Anonymous took credit, days after the election, for having disabled Rove’s vaunted “ORCA” operation.<sup>6</sup> Billed as a sophisticated GOTV network, ORCA was designed to be capable of accessing votecounts as well as databases. And, sure enough, the servers in Ohio went down on Election Night 2012 exactly one minute earlier than they had gone down on Election Night 2004, when the votes were shunted to Mike Connell’s SmarTech servers in Chattanooga for “processing.” But, alas, after the untimely 2008 death of Connell, his chief of technical operations, Rove was obliged to rebuild his IT department, and all did not go well in that endeavor. Specifically, as a result of its infiltration of Rove’s IT team, Anonymous reported that ORCA’s technicians were locked out from their own servers by what amounted to a counter-hack. While they feverishly and unsuccessfully keyed in dozens of superseded passwords, Rove continued to wait (and wait . . . and wait) for Romney to surge as Bush had in 2004.<sup>7</sup>

As wild as that scenario might seem, it does make sense that, after a decade-long parade of malodorous computerized elections, some countermeasures,

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<sup>5</sup> In E2012, in addition to SmarTech and its servers operating out of Chattanooga, several other outfits with partisan ties, such as Command Central and Scytll, were also contracted to “process” votes sent through cyberspace to remote servers.

<sup>6</sup> A founding member of the group confirmed to me in May 2016 that Anonymous had succeeded in blocking Rove on Election Night 2012 through changing the ORCA passwords and locking out its resident users.

<sup>7</sup> For an illuminating take on the events of Election Night 2012, see Thom Hartmann’s “The Big Picture 11/19/2012,” viewable at <http://www.thomhartmann.com/bigpicture/full-show-111912-did-anonymous-save-election> (at 47’23” – 57’56”).

some back-channel “immune response,” would finally be triggered.<sup>8</sup> It is evident that the crazy-quilt pattern of partial safeguards *intrinsic* to the vote counting process would not have stood in the way of the alternative outcome that seemed plausible only to Rove. Deterrence—a sufficient upping of the risk factor in the reward/risk ratio—or outright rig-thwarting would have had to come from some type of extraordinary *outside* intervention, whether in the form of electronic counter-manipulation, infiltration, or quiet threat of exposure or prosecution. This is a sobering thought and we must ask ourselves as Americans whether we are willing to accept a kind of electoral “Wild West” where elections are won and lost, and our future determined, by “white hats” and “black hats” hacking it out in electoral cyberspace.<sup>9</sup>

### Strange Numbers in The House

Looking beyond the presidency, in E2012 America re-elected a Congress of which it overwhelmingly disapproved<sup>10</sup> and we must ask whether the advantages of incumbency, gerrymandering, discriminatory Voter-ID laws, corporate cash, and political dirty tricks—formidable as they are—were enough to explain this jarring incongruence between voter sentiment and electoral result.

Nationally, while the Democrats won the aggregate *vote* for the U.S. House, the Republicans won a comfortable majority of the *seats* (234 – 201), a rare event that echoed the strange outcome in E2010, in which the Republicans achieved a spectacular net gain of 128 seats by virtue of a very pedestrian (apparent) 6.8 percent aggregate popular vote margin, a seats-to-votes ratio unprecedented in U.S. history.<sup>11</sup> In Pennsylvania, for example, the Democrats *won* the aggregate House vote but the GOP came away with a *13 to 5* margin of the state’s 18 seats. Gerrymandering is reflexively given credit for this disproportionate coup, and its impact was certainly felt, but what then accounts for the equally bizarre results of *E2010*, when most of the districts were still drawn to favor *Democratic* candidates?

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<sup>8</sup> Although even then, all the counter-hackers thought, or were able, to save was the presidency, leaving the massive down-ballot ziggurat of American politics unprotected.

<sup>9</sup> Needless to say—given the partisan pedigree of the computerized voting industry, and their consequent “insider” status—advantage black hats.

<sup>10</sup> See <http://news.gallup.com/poll/1600/congress-public.aspx>.

<sup>11</sup> Granting that there is a “first” for everything, when a string of such firsts—patterns and ratios at the outer margins of or beyond the historical record, as we have detected—it bears looking into whether some new causality has been introduced.

There was little dispute that a congressional approval rating 35 percentage points below that of the president reflected primarily voter anger over the behavior of Republicans in Congress,<sup>12</sup> who consistently used the filibuster to block both legislation and appointments in the Senate and wielded House majority control inflexibly (to put it mildly) against any initiatives that might threaten corporate hegemony, address the gaping New Gilded Age income and wealth inequalities, or attempt to ward off looming environmental catastrophe.<sup>13</sup> It would be difficult indeed, even after giving gerrymandering and incumbency their due, to explain to a visitor from a far-off land why this political intransigence and obstructionism were electorally rewarded rather than punished when voters nationwide finally had the opportunity to weigh in.

How, *in a democracy*, can popularity and power so radically diverge? And how can that radical divergence persist, remain so uncorrectable? What thumbs, visible and invisible, must be on the scale for this to happen? Is there another mechanism, more pernicious still than gerrymandering, to be investigated for its contribution to the egregiously undemocratic results in Pennsylvania and elsewhere across America?

### **Pre-set and Real-time Rigging**

Based on the body of evidence from the past decade, it appears that attempted electronic election theft on a national level has not confined itself to reliance on a single logistical tactic. Forensic analysis strongly suggests that election rigging has evolved into what might best be described as a two-tiered strategy, consisting of pre-set and real-time manipulations.

Of these, pre-set rigging is the more facile. For example, it is quite simple, as we have shown, to set the zero-counters on the memory card deployed in a precinct tabulator to +X for the supported candidate and -X for the candidate whose defeat is desired. At the end of the day, an election administrator will perceive a “clean” election in which the total ballot count matches the poll-book (i.e., sign-in) total of voters, unaware that a net of 2X votes has been successfully shifted per tabulator so tainted. Similar exploits can also be used

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<sup>12</sup> The abysmal ratings have been consistent following a sharp downward plunge dating from the spring of 2011, a few months after the Republicans took control of the U.S. House in the E2010 rout.

<sup>13</sup> The Republican House instead devoted a good part of its energy to the serial passage of bills to repeal all or part of the Affordable Care Act (ironically “Obamacare” was the spawn of the Republican “Romneycare” plan, which had its beta test in Massachusetts under Romney’s governorship), reaching an impressive score of 63 such empty gestures by the start of 2016.

to rig central tabulators. All that is required is the insertion of a few lines of malicious code among the hundreds of thousands of lines on a given card, and it is trivial to replicate this alteration on hundreds or thousands of such cards. Given the current level and practice of election security, such a rig is virtually undetectable and needs only to pass the numerical smell test.<sup>14</sup>

The difficulty with pre-set rigs programmed into memory cards deployed weeks or months before the election, however, is that of accurate calibration, guessing well in advance the minimum number of votes needed to be shifted to reverse the outcome of a given contest. This is far from a trivial problem: in both E2006 and E2008, late-breaking political developments so changed electoral dynamics that what appeared (from the red-shift numbers) to be robust pre-set rigs were overwhelmed and rendered far less effective, in terms of altering outcomes, than would have been anticipated at time of deployment.<sup>15</sup>

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<sup>14</sup> Although there is no real technical limit to the magnitude of such a rig, the smell test comes into play at some point because the likelihood of suspicion, investigation, and ultimate exposure of the rigging enterprise increases with the magnitude of the rig. Although there have been a few egregious “outliers,” red-shift evidence over the years suggests that the outer limit of electronic rigging is generally in the 7% - 10% range.

The recent forensic contributions of Francois Choquette and James Johnson have strong relevance here. They have shown, through a precinct-level forensic technique known as Cumulative Vote Share (CVS) analysis, that suspect elections present what could be characterized as a “signature” pattern in which the allegedly benefited candidate’s vote share increases with increasing precinct size.

Having controlled for “benign” factors (e.g., urban/rural differences), it appears that the most likely explanation for this recurrent pattern is that larger numbers of votes can be safely shifted in larger precincts without failing the smell test and raising a red flag (compare, for example, 100 votes shifted from a total of 200 votes = 50%, vs. the same 100 votes shifted from a total of 1000 votes = 10%). Larger precincts offer a better reward/risk ratio and would therefore be preferred targets. See Choquette F & Johnson J: *Republican Primary Election 2012 Results: Amazing Statistical Anomalies* (2012), at [http://electiondefensealliance.org/files/PrimaryElectionResultsAmazingStatisticalAnomalies\\_V2.1.pdf](http://electiondefensealliance.org/files/PrimaryElectionResultsAmazingStatisticalAnomalies_V2.1.pdf), also the CVS forensic analyses of Elizabeth Clarkson, Chief Statistician at the National Institute for Aviation Research, at <http://bethclarkson.com/?cat=4>; and Duniho M: “Evidence of Vote Counting Fraud,” at <http://ariwatch.com/Links/EvidenceOfVoteCountingFraud.htm>.

<sup>15</sup> In each of these elections, unanticipated events—in 2006 the Foley scandal and in 2008 the collapse of Lehman Brothers and the kickoff of the Great Recession—occurred in mid-September, turning close elections into routs. Recalibration and redeployment of the pre-set rigs would not only have been impractical at that juncture from a technical and logistical standpoint, but would also, in order to be successful in achieving overall Republican victories, have likely had to be of too great a magnitude to pass the smell test.

Real-time rigging, executed as the votes are tabulated on Election Day (or, more often, late on Election Night), avoids this problem. The manipulation can be precisely calibrated to overcome what would be the losing margin and so reverse the outcome. It requires, however, the deployment of infrastructure to intercept and alter votecounts, and thus is bulkier and riskier than the simple pre-set, memory card-based rig. Unlike the pre-set, memory card-based rig, it also may require some measure of knowing or unknowing cooperation from someone in the chain of election administrators. The operation that permitted interference with the Ohio presidential vote in E2004—the SmarTech servers set up under the late Mike Connell’s direction in Chattanooga, Tennessee—was eventually detected, through its IP footprint, and privately investigated, coming very close to fatal exposure of the entire rigging enterprise.<sup>16</sup> So there is a tradeoff between the upside of real-time control and the downside of risk of detection (or, as we saw in E2012, operational interference).

It is evident that each species of manipulation, pre-set or real-time, is best suited to a specific type of electoral contest. Where the volatility is low and the ultimate outcome can be roughly predicted well in advance, *or where one needs outcome-altering success in only some fraction of a large set of contests* (e.g., to take majority control of the U.S. House or a state legislature), the pre-set rig is likely to be effective enough.<sup>17</sup> Where the volatility is high, however, and the contest(s) subject to unpredictable shifts in the political wind, *or where the target is a single contest* (e.g., presidency, U.S. Senate seat) rather than a subset of a large group, pre-set rigs are more likely, as in E2006 and E2008, to undershoot (or overshoot) the mark and come up short (or suspiciously “long”).

Of course there is essentially no *technical* limit on how large a pre-set, memory card-based rig can be deployed, but obviously to take all the votes is neither necessary nor desirable. Indeed, the *cardinal algorithm* of election rigging is *not* to win every election, but to *maximize significant victories and minimize*

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<sup>16</sup> Had star witness Connell not been the victim of the plane crash that ended his life just prior to the completion of his testimony in the *King Lincoln-Bronzeville v. Blackwell* case, such fatal exposure of the rigging enterprise might well have become a reality.

<sup>17</sup> “Effective enough” because, in such a situation, undercalibrating a few contests—letting a few fish off the hook—would not adversely impact the overall goal of attaining an aggregate majority; a decent batting average will suffice. If you needed, for example, to win 30 of 60 competitive contests to take or keep control of the chamber, and targeted 40 of them, shifting dynamics in or undercalibration of as many as 10 would not compromise the overall goal.

*significant losses within bounds of acceptable risk.* For a given contest—since the risks of suspicion, investigation, and detection increase with the magnitude of the rig—it is advisable, if not imperative, to shift no more votes than are needed to bring about the desired electoral outcome (and, where necessary, avoid either a mandatory or an elective margin-based recount). Rigs of too great magnitude, such that they do not or might not pass the smell test, are dangerous and inadvisable.

In examining E2012 it is clear enough that the presidential race and the critical U.S. Senate races were of the high-volatility genus. Not only were pre-election polls in fluctuating disagreement about the prospects of these highly competitive contests, but outcomes were further subject to the vagaries of current events such as the recording of Romney’s “47 percent” gaffe and the political hay-making opportunities presented by Hurricane Sandy. It would have been extremely difficult to predict with the necessary accuracy even a month in advance what magnitude of vote shift would be necessary to guarantee victories in these top-of-the-ballot battles.

Lower profile down-ballot races for the U.S. House and state legislatures would, on the other hand, be much lower in volatility and far easier to gauge. While it would of course be possible for a given race to turn sharply on a gaffe or a brilliant attack ad, the much greater number of these down-ballot races would, *in the all-important aggregate*, smooth out such one-off bumps. And while it would also in theory be possible to see a repeat of something like the Foley scandal of 2006, which managed to sink a slew of down-ballot Republican boats, the likelihood of such a “perfect storm” event reoccurring and having a comparable impact was exceedingly small.

It is therefore plausible to posit a two-tiered rigging strategy in which a pre-set rig covering competitive U.S. House and statehouse races would be complemented, where feasible, by a real-time rig targeting the more volatile top-ballot races for president and possibly U.S. Senate.<sup>18</sup> Such critical top-ballot races might also be set up for manipulation via both pre-set and real-time methods.<sup>19</sup>

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<sup>18</sup> Recall that reversing the outcome of the presidential election would have come down to a shift of fewer than 170,000 total votes (about 0.13% of votes cast nationally) in only four states.

<sup>19</sup> In this scheme, a limited (i.e., safe) pre-set rig could then be “topped off” where necessary by a precisely calibrated real-time rig of the type that Rove gave appearance

Older readers who recall playing the popular board game “CLUE” may hear echoes here of “Professor Plum, in the Kitchen, with the Wrench.” Given the concealment of the key data (voter-marked ballots, ballot images, memory cards, code, raw exit poll numbers), neither the weapon of choice, nor the site of attack, nor indeed the perp is our case to make. Perhaps it was Colonel Mustard, in the Conservatory, with the Candlestick. The evidence that *is* available is more than sufficient to establish a *corpus delicti*—a body with enough wounds to spur us to look beyond natural causes. It is not unreasonable to call for an inquest. It goes also without saying that *the whole house is unsafe*, a deadly set-up for our unsuspecting elections.

*Our case is that we need as a nation seriously to investigate whether a crime has been or is likely to be committed and, even more importantly, rectify a situation that invites it to be committed over and over again.*

E2012, like E2008 before it, set back that cause significantly. But E2012, like E2008 before it and contrary to popular perception, offered no genuine cause for relief or celebration. Part of the rigging enterprise may have been disarmed by what amounted to cyber-vigilantism, but the vote counting system remained concealed, privatized, profoundly insecure, and an open invitation to future manipulation, especially in “off-year” elections like E2014 and E2018, and below-the-radar primaries.<sup>20</sup>

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of counting on in very publicly protesting the “premature” call by his employer, Fox News.

<sup>20</sup> The defeat of Congressman Eric Cantor, Majority Leader of the U.S. House of Representatives, in the June 10, 2014 Republican primary election in Virginia’s 7<sup>th</sup> CD set a chilling tone. It was an election counted on a combination of DREs (paperless and thus unauditible and unrecountable) and opscans (which, by Virginia law at the time, were recountable only by running the ballots a second time through the same opscans; human inspection was barred). Thus there was literally no way for an electronic rig to be discovered and exposed, and consequently zero risk for any rigging enterprise.

The far-right (though occasionally uncooperative) Cantor—consistently ahead by more than 30 points in both internal and public polls and having outspent his far-far-right Tea Party opponent, David Brat, 20-to-1—lost the election by 12 points, the first Majority Leader *in history* to suffer this fate (another “first”). *The New York Times* echoed virtually every observer of the shocking outcome by terming Brat’s feat “unimaginable” (“In G.O.P., Far Right Is Too Moderate;” Times Editorial Board, June 11, 2014; at <http://www.nytimes.com/2014/06/12/opinion/in-gop-far-right-is-too-moderate.html>).

The entire media and political class, including to my knowledge every *progressive* commentator of note, then proceeded to offer up a smorgasbord of contorted explanations for the “unimaginable,” without once entertaining so much as a hint of a

## Misdirection

American politics shuffles on in a perennial two-step of presidential and midterm election cycles. If we look at it, as riggers almost certainly would, from a risk/reward standpoint, the risk factors in the non-exit polled, below-the-radar elections for the U.S. House and state legislative control are very low indeed, and that applies even more strongly to the primary contests for these offices. The risk factors are certainly far lower than for the high-visibility and relatively high-scrutiny, *on*-the-radar Presidential and U.S. Senate elections.<sup>21</sup> But what about the reward? What do you get, how much political bang for the buck, by stealing off-year and down-ballot elections?

You get what it should be obvious that the radicalized GOP has gotten: a guaranteed *minimum* power level of gridlock—an effective and enduring blockade of the opposing agenda—swelling, with control of the White House, to hegemony and the durable prize of the federal courts (where jurists appointed by the president and confirmed by the Congress serve, barring impeachment, for life).

What was achieved in E2010, however, had especial strategic value because, along with the shocking U.S. House massacre, the GOP took control of critical statehouses in “purple” swing states throughout America, giving itself command of the decennial redistricting process and immediately using that gerrymandering power to lock in its U.S. House and state legislative majorities

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question about whether the vote totals—unverified and unverifiable—could possibly be erroneous, whether the secret vote counting process could just possibly have been subject to some species of manipulation or interference. Not one clearing of a throat, not one raising of an eyebrow.

Then all alike moved in quick lock-step into deep and fascinating discussions of the *implications* of this “seismic” political development that none (with the exception of a few of our hallucinating Cassandras) had seen as remotely possible. The implications according to the punditry? No Republican could henceforth dare to ignore or even attempt to finesse the far-far right “base;” the Tea Party, which had been barely on life support, was back with a vengeance; polarization would give way to hyperpolarization, far-right become the new center.

Unimaginable result, seismic impact, secret and unverifiable count, child’s-play rigging options, zero risk, zero investigation, zero questions asked: welcome to The New American Century!

<sup>21</sup> Apart from a much lower risk of detection, because these down-ballot contests are well-suited to pre-set, as opposed to real-time, manipulations, real-time counter-hacking *interventions*, such as essayed by Anonymous in 2012, are not a concern.

through at least 2020.<sup>22</sup> Add in restrictive and discriminatory Voter-ID laws—rammed through by these same legislatures in purported response to a nonexistent “epidemic” of voter-impersonation fraud, but operating in effect as a modern-era poll tax<sup>23</sup>—and a host of other provisions all designed to make the casting of a vote more difficult.<sup>24</sup> Fill in the picture with the now nearly complete displacement of GOP moderates by radicals via primary victories—virtually all of them low-profile, low-scrutiny; many of them, like the Cantor shocker, suspect—and one can begin to see how it is possible to quietly, massively, and enduringly shift the governmental balance of power in America. E2010 provided the *infrastructure* for nothing less than political hegemony—perpetual rule. In retrospect we can now recognize this jack-in-the-box election as a kind of self-sustaining coup, the gift that keeps on giving—achieved, as are most magician’s tricks, with the help of misdirection as audience attention was riveted elsewhere on the “major” battles of presidential years.

With the demographics all trending Democratic and with the Republicans more and more blithely promoting many unpopular causes and virulently obstructing a host of popular ones—and now group-hugging with the most reviled and divisive president in living memory—they will nevertheless, if form holds, remain stuck like a bone in America’s throat, courtesy of “magical” elections like E2010, where truly no one was looking at the Man Behind The Curtain.

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<sup>22</sup> It remains to be seen what effect the political tornado that is the Trump presidency will have on what would, under any but the most extreme circumstances, have been a brick-house GOP lock in E2018. If, as Newt Gingrich has predicted, the GOP majority proves impervious to such hurricane-force headwinds, it may safely be characterized as, in Rove’s own language, “permanent.”

<sup>23</sup> See Minnite L: *The Myth of Voter Fraud*. Cornell University Press, 2010; at <http://www.amazon.com/Myth-Voter-Fraud-Lorraine-Minnite/dp/0801448484/> See also Mayer J: “The Voter-Fraud Myth,” *The New Yorker* (10/29/2012), at [http://www.newyorker.com/reporting/2012/10/29/121029fa\\_fa\\_fact\\_mayer?printable=true](http://www.newyorker.com/reporting/2012/10/29/121029fa_fa_fact_mayer?printable=true).

<sup>24</sup> See, e.g., Yaccino S, Alvarez, L: “New G.O.P. Bid to Limit Voting in Swing States,” *NY Times*, 3/29/2014, at <http://www.nytimes.com/2014/03/30/us/new-gop-bid-to-limit-voting-in-swing-states.html>.

## E2014: NOTHING SUCCEEDS LIKE FAILURE

*If voting changed anything, they'd make it illegal.*

-- Emma Goldman

### **“They Just Didn’t Elect Democrats”**

It is one thing to gain power, another thing entirely, having exercised that power badly, to retain it. Representative democracies operate, in effect, by right of review, and the hallmark of a functioning representative democracy is that unpopular representatives and parties must stand for re-election and can be given the boot. “Throw the bums out!” is really what stands between public discontent and revolution. Considered in this light, E2014 was nothing less than a failure of democracy. Public discontent, indeed outrage, found no expression in the electoral process.

E2014 was a Republican rout with a mighty strange asterisk. As progressive pundit John Nichols put it, in a column for *The Nation* that was typical of post-mortem analysis:

“[V]oters who came to the polls on November 4 were sufficiently progressive and populist to support minimum-wage hikes, paid sick leave, crackdowns on corporate abuses of the environment, expansion of healthcare and radical reform of a money-drenched campaign-finance system. *They just didn’t elect Democrats.*”

Nichols’ explanation for this weird electoral schizophrenia?

“[P]ersonalities, dark-money interventions *and plenty of other factors* were at play. But the *consistent pattern of progressive policy votes* in combination with Republican [candidate] wins provides the starkest

evidence of the extent to which the Democratic Party was an incoherent force in 2014.”<sup>1</sup>

And so a Republican Party whose rule of Congress had earned *single-digit approval ratings*<sup>2</sup> found itself rewarded for its good work with its strongest grip on combined federal and state political power since the days of Herbert Hoover,<sup>3</sup> while the Democrats and progressives could be heard in wailing

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<sup>1</sup> Nichols J, “Democrats: The Party of Pablum,” *The Nation*, Dec. 1 – 8, 2014 (emphases added). A familiar tautology is evident: the Democratic Party *must have been* “an incoherent force” *because they lost*. Or their candidates lost while their ideas were winning. Needless to say, the possibility of computerized election theft was not among the “plenty of other factors” Nichols chose to explore.

This “the Democrats must be doing something wrong because they keep losing” theme continues to be echoed among the punditry. Nathan Robinson, for example, in his excellent 2017 book *Trump: Anatomy of a Monstrosity*, writes that Trump’s shocking moment of victory “was shaped just as much by the collapse of Democratic political fortunes as the ascent of Republican ones.” Well yes, the shocking and otherwise inexplicable loss of major elections does suggest a collapse of political fortunes, a job badly done, something that definitely needs fixing.

<sup>2</sup> Source: Rasmussen Reports at

[http://www.rasmussenreports.com/public\\_content/politics/mood\\_of\\_america/congressional\\_performance](http://www.rasmussenreports.com/public_content/politics/mood_of_america/congressional_performance). Rasmussen’s measure of congressional approval hovered consistently between 8% and 10% during the months preceding E2014. During pre-election week, just 29% of likely voters Rasmussen surveyed thought their *own* representative was “the best person for the job.” This was *the first time in polling history* that at least a plurality failed to approve of their *own* representatives.

<sup>3</sup> Most notably, in the most “throw the bums out” political climate yet measured, exactly *two* out of 222 incumbent members of the U.S. House Republican majority seeking re-election lost their seats, a *re-election rate of over 99%*.

Republicans, at this writing, hold a 51 – 49 advantage (two Independents caucus with the Democrats) in the U.S. Senate, a 44-seat margin (237 – 193, with five vacancies) in the U.S. House, a better than two-to-one (33 – 16, with one Independent) proportion of governorships, a better than two-to-one (67 - 32) grip on state legislative chambers, and full control (governorship and both branches of the state legislature) of 26 states to the Democrats’ eight (16 remain divided). This power ratio has not been equaled in nearly a century and seems a strange distortion of contemporary America as measured by any yardstick other than that of its computers tallying elections for public office.

As described by the analysts at Ballotpedia in 2016: “In 82 of 99 state legislative chambers (82.3%), the Republican Party held more seats in January 2017 than it did in January 2009. Between the time of World War II and the end of the second term of President George W. Bush in January 2009, the political party of an outgoing two-term president or consecutive political party administration lost an average of 450 state legislative seats. During President Obama’s two terms in office, Democrats experienced a net loss of 968 state legislative seats, the largest net loss of state legislative seats in this category since World War II.” So much for the “emerging Democratic majority.” See [https://ballotpedia.org/Changes\\_in\\_state\\_legislative\\_seats\\_during\\_the\\_Obama\\_presidency](https://ballotpedia.org/Changes_in_state_legislative_seats_during_the_Obama_presidency).

chorus blaming themselves and their campaigns, asking (of course) for more money, and pitching around desperately for yet more new strategies to replace the ones that had apparently just failed so miserably.

It is of course difficult to avoid *looking like*, and believing yourself to be, “an incoherent force” when you’ve just had your electoral clock cleaned. In general, it is important to remember that we all tend to suffer from a cognitive phenomenon known as “results bias.” That is, we find it difficult to evaluate strategies, tactics, and circumstantial factors in and of themselves, independent of the results they apparently produce. Another way of putting this is that strategies and tactics tend to look a lot more brilliant, even uncanny, when you “win,” and a lot more stupid and inept when you “lose.”

Especially viewed through this lens, the “incoherence” of the Democrats took, if anything, a turn for the worse with the E2016 Clinton debacle, and by now a host of observers have joined Nichols in cataloguing the Democratic Party’s increasingly apparent flaws, failures, and necrosis.<sup>4</sup> This raises a fundamental, and I believe yet unanswered, question: Did the Democrats lose their way and then, as a consequence, start losing elections; or did they start mysteriously losing elections and then, as a consequence, lose their way? I don’t think that anything short of an answer to the fundamental question about the integrity of computerized vote counting posed by this book will provide a definitive explanation of what has happened to the Democrats in the computerized vote counting era.

In 2014, certainly, everyone was shocked at the sheer magnitude of the beat-down—everyone, that is, except those of us who take seriously the corporate

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Obama’s approval rating—which stood at 58% favorable as he left office, never dipped below 40% during his tenure, and hovered around 50% in the run-up to E2014—can hardly be invoked as the probable cause of this more than double the average down-ballot carnage in the least scrutinized of all contests with national significance.

<sup>4</sup> A prime example (again) is Nathan Robinson, editor-in-chief of *Current Affairs*, who in *Trump: Anatomy of a Monstrosity* thoroughly excoriates the Clinton campaign, the candidate herself, and the Democratic Party at large for its loving embrace of celebrities and business elites (and their money) and near total loss of touch with actual voters—particularly those of the working class, of all races and ethnicities—that had been the party’s base for nearly a century.

Robinson’s descriptions ring all too true, but one is left to wonder whether the Democrats, having been stung time and again by shocking defeats *before* they took this turn, were rather driven to it (and to their retreat to blue enclaves) *by* those defeats and by their perceived serial failures to compete successfully in vast swaths of the “heartland.”

control of America's electoral apparatus and the perils of unobservable vote counting. To us, E2014 fit rather neatly and symptomatically into the pattern we had seen emerging over the previous several election cycles and was, it must be said, eminently predictable.

### The Usual Suspects

Let's set aside for the time being any thought that the votecounts behind those \*\*\*DECISION 2014\*\*\* blinking states and pie charts could possibly have been manipulated, in order to examine the various G-rated explanations that were put forward for the confounding results of E2014: low turnout, voter suppression, dark money, gerrymandering, and skewed polls.

**Low Turnout:** Low turnout provides a very convenient and rather reflexive explanation for Democratic losses, the assumption being that the "core" of the electorate is made up disproportionately of Republican voters while the Democratic constituencies are more likely to include "fringe" voters. Thus when turnout is low it's a good bet that the Republican voters showed up (because they always do) while the Democratic voters stayed home.

The problem with this analysis is that there is no reliable direct measurement of which party's voters did in fact show up in greater numbers. The reasoning is instead strictly tautological: The Democrats lost (we know this because the trusty votecounts tell us they did); therefore *their* voters must not have shown up.<sup>5</sup> But we would have no way of knowing if they *did* show up and an outcome-altering share of their votes were "mistabulated" and shifted to their opponents. That would certainly make it *look* like they didn't show up but Republican voters did. But how do we know, except via our faith in the computers and their programmers, that it wasn't *Republican* voters who expressed their disgust with a Republican-controlled Congress by staying home?

So, while *overall* turnout is measurable and was just marginally lower than in the previous several off-year elections, we really don't know *who* stayed home—or for whom those who came to the polls actually voted. What we

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<sup>5</sup> Low Democratic turnout was also one of the explanations given for Bush's 2004 victory in Ohio, patently absurd in the face of videographic evidence showing lines, frequently several blocks and hours long, at typically Democratic precincts throughout the state, while voters in Republican precincts could walk in, vote, and head home virtually without breaking stride (see, *No Umbrella*, a documentary by Laura Paglin, at <http://www.noumbrella.org/index.htm>).

do know, from the results of the unadjusted exit polls,<sup>6</sup> is that the voters who *did* turn out—i.e., the actual electorate—said that they voted well to the left of how their votes were tabulated. The “low turnout” explanation cannot make this red flag go away. We also know that the actual electorate passed, often by wide margins and often not in blue states, all sorts of progressive ballot measures,<sup>7</sup> and that too does not square with the low (Democratic) turnout theory.

**Voter Suppression:** Voter suppression encompasses a variety of schemes and tactics cynically aimed at insuring low turnout specifically among the voters likely to support one’s political opponents. As practiced by the Republican strategists who in E2010 took control of the legislatures and/or governorships of a swath of key “purple” swing states,<sup>8</sup> voter suppression schemes openly targeted millions of “fringe” voters in the Democratic ranks.<sup>9</sup>

Voter-ID laws, passed on the transparent pretext of countering a factually nonexistent epidemic of voter-impersonation fraud,<sup>10</sup> operated like a

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<sup>6</sup> “Red shift” refers to a poll vs. votecount disparity in which the votecounts are to the right of the poll results. “Unadjusted” exit poll refers to the initial public posting of the poll’s results, before those results are “adjusted” toward congruence with the emerging votecounts. As these unadjusted exit polls are ephemeral and disappear forever shortly after posting, they must be preserved and documented by one form or another of screen capture.

<sup>7</sup> See Study VI in Chapter VII for specific ballot measures in E2014. See also [http://ballotpedia.org/List\\_of\\_ballot\\_measures\\_by\\_state](http://ballotpedia.org/List_of_ballot_measures_by_state).

<sup>8</sup> Vital as well was the E2010 Republican sweep of secretaries of state (17 of 26 states where elections were held for that key position in statewide election administration); see [https://ballotpedia.org/Statewide\\_elections\\_2010](https://ballotpedia.org/Statewide_elections_2010).

<sup>9</sup> The gates were opened in 2013 to a flood of templated voter-suppression laws and regulations by the 5-to-4 party-line Supreme Court decision in *Shelby County v. Holder*, gutting a key section of the Voting Rights Act of 1965 and turning states with a history of voting-related discrimination loose to revive Jim Crow free of federal oversight.

<sup>10</sup> See [http://www.washingtonpost.com/politics/election-day-impersonation-an-impetus-for-voter-id-laws-a-rarity-data-show/2012/08/11/7002911e-df20-11e1-a19c-fca365396c8\\_story.html](http://www.washingtonpost.com/politics/election-day-impersonation-an-impetus-for-voter-id-laws-a-rarity-data-show/2012/08/11/7002911e-df20-11e1-a19c-fca365396c8_story.html). See also Chapter II, notes 71 and 87. According to the *Washington Post*, 37 states have either enacted or considered tougher Voter ID laws, including many with stringent photo-ID requirements. All told, an exhaustive Carnegie-Knight investigation into voter fraud found exactly *ten* instances of voter impersonation, the species of fraud that photo-ID would combat, since the year 2000, during which period just short of a *billion* ballots have been cast at the polls of America. Specious? Cynical? Intentionally discriminatory? Yes to all, according to a spate of recent federal and state court decisions striking down such laws (see, e.g.,

modern-era poll tax by selectively imposing costs and barriers that disproportionately impacted the poor and transient. Ditto the shortening of both poll hours (a serious impediment for working-class voters) and early-voting periods, and the consolidation of precincts to make it more difficult to reach one's polling place without vehicular ownership. Purging of voter lists to remove not just ex-felons but a broad penumbra of non-felons whose names *resembled* those of ex-felons, as well as voters who had changed addresses (renters, transients, college and graduate students, the elderly), stripped even more among the Democratic constituencies of their voting rights. And "caging," or sending operatives to the polls to challenge the rights of targeted voters and thereby relegate them to the casting of (frequently uncounted) "provisional ballots," whittled down the electorate still further. Taken together, these ugly schemes were aimed at disenfranchising over 3 million would-be voters,<sup>11</sup> or about 4 percent of the

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<https://www.cbsnews.com/news/parts-of-wisconsin-voter-id-law-are-unconstitutional-court-says/>; <https://www.theatlantic.com/politics/archive/2017/05/north-carolina-voter-id-law-supreme-court-cert/526713/>; <http://thehill.com/homenews/state-watch/385107-arkansas-judge-blocks-state-voter-id-law>; see generally, [https://en.wikipedia.org/wiki/Voter\\_ID\\_laws\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Voter_ID_laws_in_the_United_States)).

<sup>11</sup> See <http://www.gregpalast.com/gop-led-purge-threat-to-3-5-million-voters/>; and, generally, Palast G, *Billionaires & Ballot Bandits; How to Steal an Election in 9 Easy Steps*. New York: Seven Stories Press, 2012.

The primary coordinated purging program, dubbed Interstate Crosscheck, is the work of Chris Kobach, Republican Secretary of State of Kansas, chosen by President Trump to co-chair, with Mike Pence, Trump's now-disbanded "Commission on Election Integrity," examined in the next chapter. Kobach was found in contempt of court and fined \$1 million by a Bush-appointed federal judge fed up with his refusal to comply with court orders to process voter registrations (see <http://www.kansascity.com/news/politics-government/article209268109.html>). Kobach ultimately not only lost his case for requiring Kansans to *prove* rather than attest to citizenship (an onerous burden requiring production of passports or birth certificates) to be eligible to vote, but was ordered by the judge to attend law-school classes (on top on ordinary CEU requirements, so slipshod was the AG's (and erstwhile law professor's) courtroom presentation (see <http://www.cjonline.com/news/20180618/judge-sides-with-aclu-in-voter-registration-fight-orders-kobach-to-go-to-school>).

Kobach's infamous Crosscheck program, purporting to catch voters who voted under the same name in different states (a lot of trouble to go to, if you think about it for a moment), contained literally millions of names and was, in Palast's words, "rife with literally millions of obvious mismatches." These would-be voters, most of them among the Democratic constituencies, were purged and found themselves disenfranchised.

This sort of naked scheme for suppressing the (Democratic) vote is what passes, with a chuckle, in GOP brainstorming sessions, for "election integrity." Evidence from the 2016 primaries suggests it may have metastasized to *Democratic* brainstorming sessions, though some maintain that what appeared to be the selective purging of would-be Sanders voters was in fact routine voter-list hygiene.

total electorate, the vast majority of whom were demographically part of the Democratic constituency.

But *none* of these tactics, no form of voter suppression, can account for the red shift. Exit polls included only those voters who could respond that they had actually cast their ballots, and so *excluded* would-be voters who had been purged, were unable to obtain qualifying ID, discouraged or precluded by shrinking of access (hours and/or location), or successfully caged.<sup>12</sup> The effect of the voter suppression schemes and the effect of the tabulation errors reflected in the red shift are *additive*—in the phrase coined by Fittrakis and Wasserman, “strip and flip.”<sup>13</sup>

**Dark Money:** If, in the language of the corporate protectorate that was the Roberts Court circa 2014, “money” is translated as “speech,” then “dark money” would be the speech of anonymous bag-over-the-head hecklers who wish their words to be heard loud and clear without taking on the risk of being identified as the speaker.<sup>14</sup> After the *Citizens United* decision opened the floodgates to unregulated corporate cash in 2010, the damage was compounded when Congress failed to enact the source-disclosure requirements that even the Court seemed to expect would bring a necessary element of public accountability to all the “speaking” it had just enabled.<sup>15</sup>

It is not disputed that E2014, like its two post-*Citizens* predecessors, was awash in dark money along with gobs of plain old traceable corporate cash.

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<sup>12</sup> Provisional ballots do present a challenge to the exit pollster. While identifying provisional voters is easy enough, estimating the proportion of provisionals cast that may not be counted, in order to downweight such respondents accordingly, is trickier, though much historical data is now available to inform this estimation.

<sup>13</sup> Fittrakis B, Wasserman H: *The Strip and Flip Selection of 2016: Five Jim Crows & Electronic Election Theft*, at <https://www.amazon.com/dp/B01GSJLW0I>.

<sup>14</sup> The fear is primarily of consumer boycotts and other forms of populist punishment for perceived corporate attempts to “buy” elections. To return to an earlier observation (p. 91): “[T]he battle lines are indeed simple: a ruling elite, corporate and governmental, that is attempting to know as much as possible about you and me while seeing to it that we know as little as possible about them.”

<sup>15</sup> Far from applying a corrective, however, the Roberts Court most recently, in yet another 5-4 party-line decision, *McCutcheon v. Federal Election Commission*, 134 S.Ct. 1434 (2014); (see <http://www.demos.org/publication/what-mccutcheon-v-fec> for a thorough analysis), went *further* and removed all aggregate limits on contributions to national parties and candidate committees, effectively setting out the Billionaire Welcome Mat in front of the door it had blown open with *Citizens United*.

With the corporate point of view so loudly and expensively presented, many have argued that *Citizens United* was at the root of the rightward electoral veer. But—apart from the fact that, like the turnout numbers and voter suppression, it leaves the red shift unaccounted for—this money-based explanation does not appear to fit the facts we find on even the shallowest of drilldowns. Looking at the aggregate spending for E2014, The Center for Responsive Politics found that the totals for the two sides were all-but-equal: \$1.75 billion for the GOP to \$1.64 billion for the Democrats, or all of a 3.2 percent edge<sup>16</sup>—hardly the kind of differential to fuel a rout. More significantly still, major spending advantages were *not* associated with victory in many of the key races.

Clearly money is needed to mount nearly all successful campaigns, whether it goes to establish name recognition, drum in a rudimentary message, get out the vote, or mercilessly pillory one’s opponent. Not clear, however, are the levels at which additional spending becomes progressively less effective, ineffective, or even counter-productive. There comes a saturation point, after all, at which beleaguered voters have heard it all and heard enough, such that yet more messaging is as apt to annoy them and turn them off as change their minds or motivate them. There is evidence that money-bath campaigns often cross this line and fail to buy more votes at *any* price.<sup>17</sup> As ugly and inimical to the spirit of democracy as big-donor funded campaigns (and particularly those funded anonymously) seem to be, neither dark money nor the fund-fests enabled by *Citizens United* and *McCutcheon* pass muster as valid explanations for the electoral patterns that have come to characterize the computerized voting age.

**Gerrymandering:** Gerrymandering, or political redistricting for partisan advantage, can work one of two ways: if you command an aggregate popular majority, you can divide it up among the districts<sup>18</sup> in such a way

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<sup>16</sup> See <http://www.opensecrets.org/news/2014/11/money-won-on-tuesday-but-rules-of-the-game-changed/>.

<sup>17</sup> In the 2011 Walker recall election in Wisconsin, for example, it was found that most of the lavish spending (eight to one in Walker’s favor) occurred after all but a tiny percentage of the voters had made up their minds (see p. 73).

<sup>18</sup> Gerrymandering works for both U.S. House and state legislative districts and might be applied as well to the selection of presidential electors. The U.S. Senate, statewide and thus not subject to gerrymandering, is nonetheless grossly disproportionate as a representative body, with half the U.S. population being represented by just 18 out of 100 senators.

that your party maintains a slim margin in every one of them, shutting the opposing party out; or, more commonly, you can minimize the opposing party's electoral victories by drawing districts in such a way as to concentrate as many of its voters as possible into as few districts as possible. If this, known as "packing," is done with sufficient ruthlessness and artistry it generally results in a significant incongruity between electoral support (i.e., votes) and candidates elected to office. In fact, it is often possible for a party with minority status among the electorate to nonetheless hold a majority of the seats within a state.<sup>19</sup>

Gerrymandering takes its name from the Revolutionary Era's Elbridge Gerry, so we can be assured that it has held a place in the arsenal of American political tactics for a very long time. What has changed dramatically, with the advent of the computer age and "big data," is the remarkable, practically house-by-house, precision with which districts can be carved up to include and exclude voters based on their known or suspected partisanship.<sup>20</sup> With nearly all the guesswork and blurriness

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Given this large state-small state imbalance, which correlates fairly strongly with America's blue state-red state division, it is a telling measure of the major parties' respective popularity (at least as measured by the results of top-of-the-ballot, high-profile, exit-pollled and high-scrutiny contests) that the Democrats have been more than able to hold their own in Senate representation even after the collapse of the Solid (Democratic) South.

<sup>19</sup> For example, in 2012 the 18-member U.S. House delegation from Pennsylvania sported 13 Republicans to five Democrats, in spite of the fact that the Democratic House candidates had, statewide, received an aggregate *majority* of the vote. The GOP maintained that margin in E2014, also increasing their State Senate margin from five to 10 seats and State House margin from 20 to 35 seats, while the Democratic gubernatorial candidate won handily by a 55% - 45% margin.

<sup>20</sup> See "Redistricting, A Devil's Dictionary" at <http://www.propublica.org/article/redistricting-a-devils-dictionary/single>. Although gerrymandering for partisan advantage is of debatable constitutionality, the geographical standards actually applied by the courts have become so lax that essentially *any* contiguous shape, however jagged and meandering, will pass muster, allowing ample latitude to divvy up voters for maximum political gain. Justice Stevens, while on the Court, waged devoted battle against this cynical (in design and effect) distortion of the electoral process, but lost to the bloc led by the late Justice Scalia.

Federal and state courts are finally beginning to revisit the constitutionality of some of the more egregious redistricting schemes, with a major Supreme Court decision now pending. In Pennsylvania, the State Supreme Court, frustrated by the obvious foot-dragging noncompliance of the Republican legislature, set about having the existing hyper-partisan district map redrawn by an independent expert, resulting in politically highly significant changes (in response, the legislature moved to impeach the Democratic judges on the high court). Most states, however, are highly unlikely to be forced to modify even the most ultra-partisan maps in time for E2018 or indeed E2020.

removed, gerrymandering has become an extremely potent political weapon and tool of partisanship.<sup>21,22</sup>

The decennial U.S. Census records population changes and serves as the basis for the major gerrymandering opportunities that present themselves at the beginning of each decade. Under-the-radar state legislative victories in E2010, to which I have previously referred as “the gift that keeps on giving,” set the GOP up to seize these opportunities and, predictably, they did so with both fists and all the big data they could feed into their

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<sup>21</sup> Gerrymandering has an understandable appeal to seated members of *both* parties, since it tends to produce “safe” seats and often reinforces the already formidable advantages of incumbency. It is worth noting, however, that Democratic voters, who are more likely to be clustered in dense and enclaved urban communities, present significantly more vulnerable targets for the gerrymanderer’s Sharpie. It is a lot easier geometrically and geographically to draw the gerrymanderer’s holy-grail 90%+ district of Democratic voters than of their Republican counterparts. California is notable among states for having bestowed the redistricting power on an independent board, the California Citizens Redistricting Commission, ostensibly free of partisan control, though in practice that standard is virtually impossible to achieve.

<sup>22</sup> Although the presidency has thus far been immune to the warpings of the gerrymander, a scheme has been floated to change that.

The American Legislative Exchange Council (ALEC) is a nominally nonpartisan but in fact radically right-wing nonprofit founded in 1973 but relatively quiescent prior to the dawn of the New American Century. Almost entirely corporate funded, most notably by the billionaire Koch brothers, ALEC templates right-wing legislation, very often procedural in nature (as in Photo-ID bills), for rubber-stamping by GOP-controlled state legislatures—its theatre of operations of course greatly expanded by E2010 and E2014 (see generally, [http://en.wikipedia.org/wiki/American\\_Legislative\\_Exchange\\_Council](http://en.wikipedia.org/wiki/American_Legislative_Exchange_Council)).

Among ALEC’s most recent brainstorm is a plan to “gerrymander the presidency” by apportioning presidential electors by congressional district in key swing states where Republicans hold trifecta control. This would be a perfectly legal and constitutional, if hyper-cynical, tweak of the presidential election game. States are free to depart from the winner-take-all presidential model (which itself is subject to a pointed fairness-based critique) and replace it with what seems abstractly on the surface to be a fairer and more reasonable one.

The consequence, however, is anything but abstract or fair: by shifting at least half the electoral votes of certain large and ordinarily presidentially blue states to the Republican column (*recall that the congressional districts of these states have already been gerrymandered to the GOP’s overwhelming advantage*), it becomes, in the words of one bootless Democratic plea for intervention, “virtually impossible for a Democratic [presidential] candidate to win, even if they win the national popular vote overwhelmingly” (see <https://www.dailykos.com/campaigns/1011>). It remains to be seen whether, or at what juncture, ALEC and its backers will push the button on this politically nuclear weapon, though E2020 appears likely to be a candidate for such desperate measures.

supercomputers.<sup>23</sup> The result was a steep and artificial tilt of the political table, which many have cited as yet another major cause of the E2014 rout.

It would be silly to deny the impact of gerrymandering on the outcome of E2014 and the current political balance of power. The impact is formidable, as the architects of the E2010 rout grasped well before the media, let alone the general public, caught on. It would take a massive GOP political implosion, coupled with an observably counted election, to overcome the advantages that gerrymandering has conferred upon GOP candidates for the U.S. House and a broad swath of state legislatures.

Nonetheless gerrymandering cannot be invoked to account for the rout that was E2014. Gerrymandering has no impact on U.S. Senate and gubernatorial contests, of which dozens were red-shifted, and it has no impact on the red shift in *any* contests, including the aggregate red shift of the U.S. House. It is a heavy thumb on the scale for the U.S. House and state legislatures, but it takes *several* heavy thumbs to produce the kinds of incongruities that now characterize American politics. Gerrymandering, potent as it may be, is only the set-up for the haymaker.

**Skewed Polls:** As we have seen, none of the phenomena we have examined—low turnout, voter suppression, dark money, or gerrymandering—has any significant bearing on the red shift, the rightward disparity between exit polls and the votecounts, which we have become accustomed to finding in American elections in the age of computer counting. Since the possibility of votecount manipulation cannot be admitted, it has become axiomatic among the punditry to account for the red shift with a standard line or two about the polls being “off again” because they “oversampled Democrats.”

According to this narrative, the Democratic voters then pulled a fast one on the pollsters by not turning out to vote, and we’re told to believe this because the Democratic candidates (but strangely not a hefty stack of progressive ballot propositions) *lost* (or did worse than expected), having received a smaller percentage of the vote than the polls indicated. You can see the circularity of this reasoning: the “oversampled Democrats” conclusion rests on a turnout assumption which in turn rests on the

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<sup>23</sup> See, Daley D, *RATF\*\*KED: The True Story Behind the Plan to Steal America’s Democracy*, 2016, at <https://www.amazon.com/dp/1631491628>.

presumed accuracy of the votecounts. Everything falls neatly into place as long as we don't question the presumption of an accurate count.<sup>24</sup>

The red shift in E2014 was egregious. In the elections for U.S. Senate for which exit poll data was available, the red shift averaged an impressive 4.1 percent, with a half dozen races seeing red shifts of over 7 percent. Out of the 21 Senate elections that were exit polled, 19 were red-shifted. In the exit-pollled gubernatorial elections, the average red shift was an even greater 5.0 percent and 20 out of the 21 races were red-shifted.

In U.S. House elections, which are exit polled with an aggregate national sample,<sup>25</sup> the red shift was 3.7 percent. This is the equivalent of approximately 2.9 million votes which, if taken away from the GOP winners of the closest elections, would have been sufficient to reverse the outcomes of 89 House races such that the Democrats would have emerged from E2014 holding a 120-seat (277 to 157) House majority.<sup>26</sup>

Although the thousands of state legislative contests are not exit-pollled, it is reasonable to assume that the consistent red-shift numbers that we found in the Senate, House, and gubernatorial contests would map onto these critical (as we have seen) down-ballot elections as well.

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<sup>24</sup> See, e.g., Nate Cohn's 6/27/16 *NY Times* article, "Exit Polls, and Why the Primary Was Not Stolen From Bernie Sanders," at [http://www.nytimes.com/2016/06/28/upshot/exit-polls-and-why-the-primary-was-not-stolen-from-bernie-sanders.html?\\_r=0](http://www.nytimes.com/2016/06/28/upshot/exit-polls-and-why-the-primary-was-not-stolen-from-bernie-sanders.html?_r=0). Cohn's analysis is impeccable and his deductions about exit polls, in 2016 and historically, follow with *perfect* logic from his starting point—the unstated premise that all the votecounts tabulated in the computer era have been accurate. It brings to mind the scene from the Harrison Ford movie, *The Fugitive*, in which a reporter raises the question of Dr. Kimble's possible "innocence" to the blowhard spokesman of the Chicago PD, who interrupts to respond, tartly and with great impatience, "He's not innocent. He's guilty. He was convicted in a court of law!" As indeed he was.

<sup>25</sup> The sample size of the House poll exceeded 17,000 respondents, yielding a Margin of Error (MOE) of less than 1% and a Total Survey Error (TSE) of less than 2%. The odds of a 3.7% red shift occurring by chance were less than one in a billion. When examined demographically, the exit poll samples, as in those for E2004 (see Study II in Chapter VII), were found not to exhibit any leftward partisan skew.

<sup>26</sup> Of course I am not suggesting that vote theft can be targeted with such exquisite and infallible precision. But it would make no sense at all *not* to target vote theft to the closer races and shift enough votes to ensure narrow victories. When one couples the evidence of a nearly 3 million vote disparity with even a modestly successful targeting protocol, the result is easily enough to flip the balance of power in the U.S. House.

So the polls (both exit and pre-election) got it very wrong yet again. But were all these polls “off?” The answer to that question is almost certainly “Yes.” But not in the direction commonly supposed.

Approaching E2014—in fact, on the day preceding the election—I published an article, entitled “Vote Counts and Polls: An Insidious Feedback Loop,”<sup>27</sup> detailing the corruption of our forensic baselines as pollsters systematically amended their polling methodologies to remedy the string of embarrassing misses (marked by persistent red shifts) with which they began the computerized voting era. In the article, I addressed two specific methodological changes that together have a potent effect on poll outcomes: the first is the use of the Likely Voter Cutoff Model for selecting the sample, disproportionately eliminating respondents belonging to Democratic constituencies; and the second is the use of demographics (including partisanship) from the *adjusted* exit polls of prior elections to weight the current sample.

Each of these adaptations is discussed in detail in the aforementioned article and in Study V of Chapter VII of this book, but the overall effect is to *undersample* Democratic constituencies in both exit and pre-election polling such that, with these methodologies employed, an honestly counted election should produce consistent *blue* shifts (votecounts more Democratic than the polls),<sup>28</sup> or exactly the opposite of what E2014 presented.

I concluded my article with the observation that “on Election Day, *accurate* polls should be seen as a red flag,” because a methodological contortion like the Likely Voter Cutoff Model should get election results *right* if and only if those election results are *wrong*. Instead we had wildly *inaccurate* polls, a massive red shift *beyond* that which was, via such contortions, already anticipated by and built into the polls. These “double red flag” results are extremely hard to reconcile with any scenario in which votes were tabulated as cast in thousands of elections across America in E2014.

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<sup>27</sup> <http://www.truth-out.org/news/item/27203-vote-counts-and-polls-an-insidious-feedback-loop>.

<sup>28</sup> This appears to be precisely what transpired, in an intra-party context, in the 2016 Democratic primary in Oklahoma, a red flag detailed in the next chapter.

## The Consequences: A Nation Lost in Translation

America prides itself on being the first and best representative democracy, and representative democracies are about the translation—via elections, the casting and counting of votes—of the public will into a representative government, a team of officeholders empowered to set policies and chart direction. A quick review of the post-E2014 scorecard showed the GOP, purged of essentially all of its moderate elements,<sup>29</sup> holding a 10-seat majority (54 – 44) in the U.S. Senate, a 60-seat majority (247 – 187) in the U.S. House, nearly a two-to-one gubernatorial advantage (31 – 18), a better than two-to-one grip on state legislative chambers (68 – 30), and full control (governorship and both branches of the state legislature, now termed the “trifecta”) of 23 states to the Democrats’ seven. Judging by its array of officeholders, America in the wake of E2014 could only be seen as a very red country.

But a major component of that red-paint reality, a kind of secondary effect of all the shocking and fundamentally inexplicable defeats, goes beyond the array of actual officeholders. Outcomes—winning or losing—are part of an educational feedback loop and when outcomes are grossly distorted it is the political equivalent of receiving a bad education, of being taught that 2 plus 2 equals 5. Nor is the routed party the only student in the class. The nation itself, in believing its officeholders to be duly elected and thereby representative, develops, through looking into that distorted mirror, a distorted self-portrait: “America *is* a red country”—it’s right there on the blinking Election Night map. It winds its way through every item of political news until it becomes a truth embedded in all our brains and until more such outcomes cease to be shocking at all. It takes a long time, many election cycles, however, for another, more ominous recognition to dawn: that *no matter how we all vote, we keep getting a government that most of us don’t want*, a government that, divided as we may be on many fronts, we begin to recognize does not represent *any* of us, respond to *any* of us, or faithfully translate our collective will into laws, policy, and national direction.

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<sup>29</sup> It is worth reiterating here that primary elections, and particularly down-ballot primary elections, are the lowest hanging fruit an election rigger can pick. There are almost never any baselines (exit polls or pre-election polls) for forensic analysis, and media/public scrutiny is generally nonexistent. In the very rare cases where the level of scrutiny spikes and rudimentary baselines *are* available, as in the “unimaginable” (according to the *Times*) primary defeat that unseated House Majority Leader Eric Cantor earlier in 2014, the usual suspects, however perplexing, are trotted out and no investigation of the vote-count process is even considered.

Karl Rove's long-sought *perpetual rule* and *permanent majority* have come to near-full fruition. That this is hardly an accurate translation of the public will and the "soul" of America could not matter less to the likes of Rove and his clients, nor to the likes of Roger Stone, Paul Manafort, the Kochs or the Mercers: the permanent majority they have engineered is a permanent majority of rulers, not subjects.

But, as the next chapter will explore, it *does* matter to the public itself. Our finally perceived loss of sovereignty—verging now on government without the consent of the governed—has begun to have a profound impact on the American psyche, and we are watching it start to play out in the awful degradation of American politics. This is what the era of computerized vote counting has wrought and, with no pleasure in being such a downer, I suggest that any viable way out begins with facing the full reality of this achievement in all its formidable dimensions.

## E2016: THE CHICKENS COME HOME BIGLY

*‘What is a Caucus-race?’ said Alice, not that she much wanted to know.*

— *Lewis Carroll, Alice’s Adventures in Wonderland*

### Tip of the Hat?

Chess, at its highest levels, is a game of patient and far-seeing strategies, foundation building, and inspired positioning. In observing a grandmaster’s chess match and seeing a far-sighted strategy coming to fruition, one is inclined to tip one’s hat to the skill and brilliance of the player who brought it off. That inclination would be tempered though if one had also observed the master, when his opponent momentarily arose from the board to get some air, stealthily moving twice. Politics, like chess, is a finely balanced game, one that becomes a lot easier to win with just one extra move and no contest at all if you can pull off that little stunt several times in the course of a match.

Working from the bottom up, taking advantage of American media and public obsession with presidential politics to quietly take control of the power structure whose foundations are dug further down the ballot, is a very smart and patient plan, one worthy of a master strategist. As we have seen, state-by-state control of that political infrastructure spawns massive positional advantages and the capacity to lock in political domination impervious to adverse developments in popularity (e.g., single-digit approval ratings) or glaring incongruence with the public will. All of that has been planned and executed brilliantly and would be worthy of at least a tip of the hat, were it not for those “extra moves” that we have seen but the opponent, who was out getting some air, apparently missed.

Yet the master plan, even if we suspect computerized election theft has been a critical component of it, still presents an element of brilliance. The *capacity* to cheat, to take full advantage of a vulnerable system, is evident enough. The *decision* to cheat is unremarkable—it fits the times. What *is* remarkable is the ability to read the psyches of the players and guardians of the game, so as to

determine rather precisely how flagrantly one can cheat—how much one can steal, and when, where, and how—how dramatically alter the course of events, without getting caught, without even getting investigated. It is in this all-too-accurate reading of *us* that the true sinister genius of a master player lies.

But the rigged election game gets more difficult as the disconnect between the voters and their supposed representatives widens. E2014, with approval ratings in the single-digits, was the quintessential throw-the-bums-out election that wasn't, leaving in its wake large swaths of the public, left and right, clenched in political outrage or mired in political despair. That left a lot—indeed, according to every poll, a super-majority—of frustrated, angry, and disgusted voters ready to go “in a different direction”—populist and, from the corporate point of view, dangerous.

### **2016: The Politics of Disgust**

And so we arrived at the year 2016—presidential and unfathomable. The American electorate wound up being offered a choice between the most despised, distrusted, indeed hated pair of major-party presidential nominees in living memory, if not in history: Hillary Clinton and Donald Trump carried the highest unfavorability ratings ever recorded.<sup>1</sup> This *prix fixe* menu was the product of a primary season featuring a series of elections as suspect as any we had yet observed in the New American Century.

Before turning to the evidence gathered in support of that assertion, let's begin by taking note of what the American people came into this critical election year seeming to *want*. It was hard to miss the energy that swirled around two candidates, Trump and Bernie Sanders, who, from the right and left respectively, were screaming “ENOUGH ALREADY!!” and promising to shake up the status quo in dramatic fashion. This angry, sometimes bordering on nihilistic, energy dwarfed whatever scant enthusiasm greeted the other major candidates—from Clinton down the gamut of then-current and erstwhile Republican office-holders (Marco Rubio, Chris Christie, Jeb Bush, Ted Cruz, John Kasich, et al)—who were all perceived, wherever they attempted to

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<sup>1</sup> For a snapshot of the numbers, which of course fluctuated but consistently tunneled through the subterranean strata, see, e.g., <http://www.gallup.com/poll/193376/trump-leads-clinton-historically-bad-image-ratings.aspx>.

An entrepreneurial friend lamented to me that she had—alas, too late!—come up with the idea of selling “Election Sickness” bags, such as the airlines supply in every seat pocket, with a picture of Clinton on one side, Trump on the other, and a set of instructions for use. I have no doubt that had she gone into production in September, she would have made a fortune.

position themselves on the political spectrum, as card-carrying members of the establishment.

Let us also notice that, of the two candidates who excited the voting public, the one on the right became the Republican nominee while the one on the left was stopped cold, just short of his party's nomination. And the one on the right was bathed in a constant media spotlight while the one on the left was effectively ignored until it was no longer remotely possible to do so. It does not take an advanced degree in political science to recognize that in the parade of presidential aspirants Sanders was the only one who, from the standpoint of the power elites, was both electable and politically dangerous enough that he had to be stopped.

### **The R-Word Comes into Common Usage**

By the time of the Democratic Convention, there were millions of hopping mad Sanders supporters, convinced not only that their hero was robbed but also that Hillary Clinton herself was the thief or at least was aware of the heist.<sup>2</sup> What these voters saw had the look of a thoroughly “rigged” game, though it was Trump, not Sanders, who kept resorting to the R-word in reference to the nomination process.<sup>3</sup>

What was it that Sanders voters saw? To begin with, there was the specter of their candidate drawing first large, then huge and wildly enthusiastic crowds—

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<sup>2</sup> We are witnessing an unobservable vote counting process giving predictable rise to chronic suspicion of fraud, knee-jerk assignment of blame, and a general breakdown in the trust necessary for a legitimate and peaceful electoral and political process.

But, while it is natural enough to assume that the *beneficiary* of a covert manipulation was in fact its *perpetrator*, there are certainly non-candidate bad actors—foreign and of course, though the media seems hell-bent on denying it, domestic—with strong motivation to influence and alter electoral outcomes, such that *the beneficiary of such activities may not only not be their perpetrator but also may be entirely unaware of their existence.*

We must ask, therefore, who besides Clinton herself had a strategic interest in making sure that Clinton and not Sanders was the Republican candidate's opponent in November? It would make sense that any operative charged with producing a Republican victory in November would have begun his work in the Democratic primaries, helping the ultra-vulnerable, FBI-targeted Clinton to the nomination.

<sup>3</sup> Trump also applied the R-word prospectively to the general election contest, giving rise to concern that results adverse to him might not be accepted as legitimate. It was ironic to contemplate the ark of election integrity being carried into battle by such a champion. Unsettling as well the sudden alarm that our electoral system might be vulnerable to *foreign-state hacking*—the “Russians”—as if the possibility of *insider rigging* by domestic operatives had never occurred to anyone.

far outstripping those of Clinton—and yet being all-but-ignored by mainstream media. They saw a candidate raise an enormous war chest from millions of individual contributions and entirely without feeding alongside Clinton (and the other candidates) at the corporate trough—a feat with the potential to revolutionize American politics that nevertheless somehow failed to impress the press. Then they saw, often up close and personal, in state after state, obstacles thrown in the path of would-be Sanders voters—sometimes as the result of legitimate, if cynical, regulations governing registration deadlines and qualifications, but often a function of what seemed to be targeted purges of voter databases and suspiciously erroneous instructions given to election administrators and to voters. Millions of voters were relegated to the dread “provisional” ballot, with an unknown proportion of those votes going uncounted. And the impact of all these schemes was all too obviously and disproportionately to Sanders’ electoral detriment.<sup>4</sup>

It didn’t help when a hacker’s and/or insider’s leak of emails confirmed that the Democratic National Committee, supposedly an unaligned umpire and facilitator of nomination battles, was surreptitiously promoting Clinton’s cause in a variety of ways, and that elements of the mainstream media were also in on the game.<sup>5</sup> And of course there was the thick padding—the hundreds of “superdelegates” chosen not by the voters but by the Democratic Party establishment, 90 percent of whom would vote at the convention for the anointed candidate, Clinton—amounting to a nearly *20 percent handicap* operating against the delegate count of Sanders (or any other “outside” candidate who might have had the temerity to mount an intra-party challenge).

Those were thumbs on the scale that voters *could see*. And because, unlike in a suspect one-day November election such as E2004, the primary season extended for months, the hits kept coming and the distress and eventual outrage kept building, along with ever increasing levels of vigilance and distrust. Questions (and lawsuits) hung over the electoral procedures of many primary (and caucus) states, with egregiously visible fiascoes coming to light in, among others, Arizona, Kentucky, Ohio, New York, and California. This three-ring electoral circus was what the voters *saw*.

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<sup>4</sup> See, e.g., [https://www.huffingtonpost.com/entry/arizona-primary-problems\\_us\\_56f41094e4b04c4c376184ca](https://www.huffingtonpost.com/entry/arizona-primary-problems_us_56f41094e4b04c4c376184ca).

<sup>5</sup> See [https://en.wikipedia.org/wiki/2016\\_Democratic\\_National\\_Committee\\_email\\_leak](https://en.wikipedia.org/wiki/2016_Democratic_National_Committee_email_leak).

What the voters *couldn't see* was what was happening to the votes that had been cast. But the question naturally framed itself: If Clinton was, as it appeared, the beneficiary of all these *discoverable* thumbs on the electoral scale, how could a vote counting process that was unobservable and so highly vulnerable be blithely presumed to be immune to an *undiscoverable* thumb? And the obvious follow-up: How bright is the ethical line between mass-purging voters to suppress their votes and simply mistabulating their votes? To a multitude of Sanders supporters, at least, not very bright.

### **Primaries and Caucuses**

Taking place in cyberspace, the vote counting process was of course not directly observable; but, as each state weighed in, numerical evidence began to emerge and pause-giving patterns become established. It was hard not to notice, as the Sanders candidacy established itself and the nomination battle heated up, a glaring divergence between the election results in primary versus caucus states. In 14 states, pledged convention delegates were chosen in caucus meetings where the principal method of counting votes was observable and where state totals could be reconciled via a traditional tabulation tree to the counts at each individual caucus. The first caucus, in Iowa, led off the nomination battle and resulted in a razor-thin Clinton victory (49.9 percent to 49.6 percent) amidst various allegations of procedural mismanagement.<sup>6</sup> The second caucus, in Nevada, brought forth another narrow Clinton victory (52.6 percent to 47.3 percent) and more allegations.<sup>7</sup>

Following the Nevada caucus and heading into March, it became apparent that the nomination would be a battle and not a coronation. The table below presents the results of the 12 remaining state caucuses:

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<sup>6</sup> Concerns “ranged from the potential for incorrect vote counts due to crowding to confusion over the role of coin tosses to settle some tie results.” See <http://www.desmoinesregister.com/story/news/politics/2016/07/26/87576058/>.

<sup>7</sup> This time the main problem was that many Clinton staffers and supporters were not required to register in order to vote. See <http://www.dailykos.com/story/2016/2/26/1491957/-Nevada-and-Iowa-DNC-run-caucuses-full-of-fraud-lics-vote-irregularities-wrong-winner-announced>.

2016 Democratic Party Caucuses (3/1 - 6/7)			
State (Date)	Sanders %	Clinton %	Sanders Margin
Colorado (3/1)	59.0%	40.3%	18.7%
Minnesota (3/1)	61.6%	38.4%	23.2%
Kansas (3/5)	67.7%	32.3%	35.4%
Nebraska (3/5)	57.1%	42.9%	14.2%
Maine (3/6)	64.3%	35.5%	28.8%
Idaho (3/22)	78.0%	21.2%	56.8%
Utah (3/22)	79.3%	20.3%	59.0%
Alaska (3/26)	86.1%	18.4%	67.7%
Hawaii (3/26)	69.8%	30.0%	39.8%
Washington (3/26)	72.7%	27.1%	45.6%
Wyoming (4/5)	55.7%	44.3%	11.4%
North Dakota (6/7)	64.2%	25.6%	38.6%
<b>Average</b>	<b>68.0%</b>	<b>31.4%</b>	<b>36.6%</b>

As can be seen, *every* caucus was won by Sanders, all by wide margins, ranging from a low of 11.4 percent to a high of 67.7 percent. *Sanders' average margin of victory was 36.6 percent—he won a better than two to one ratio of caucus voters.*

Were the caucus states a discrete and homogeneous swath of America, an identifiable bastion of Sanders support? An argument could be made that, with the exception of Maine, which could be considered penumbral to Sanders' Vermont, each of these states is located west of the Mississippi; in most of them, voters were more likely to be white (though not young) than in the primary states where Clinton built her narrow margin of pledged delegates. There was, however, substantial political and cultural diversity within the caucus set (Minnesota, Colorado, Washington, and Hawaii hardly mirror Utah, Idaho, Kansas, and Nebraska).

Then there was the divergence of the Dakotas, North and South. In South Dakota, a primary state, Clinton edged Sanders 51.0 percent to 49.0 percent; in North Dakota, a caucus state, Sanders blew out Clinton 64.2 percent to 25.6 percent. The black population of each state is 1 percent. The North Dakota caucus and the South Dakota primary were held on the same date, June 7. Is it unreasonable to wonder what, other than the method of counting votes, might account for such a dramatic difference in outcomes—greater than 40

percent—in these neighboring and demographically similar states? And more generally, *what would account for the entire run of Sanders caucus blowouts?* For there is nothing subtle here in these numbers, nothing that can be reassuringly written off as a figment of race, age, gender, or any other all-encompassing demographic or political explanation.<sup>8</sup>

### **2016 Exit Polls: A Tale of Two Parties**

If there was any remaining doubt that doubt was in order, it was removed by the exit polls. We were treated to yet another revival of the Great Exit Poll Debate, which had its first primetime run in the wake of E2004. In this snarkfest, those questioning the fidelity of the votecounts cite exit poll-votecount (EP/VC) disparities as evidence indicative of votecount mistabulation, while defenders of the faith in turn attack the reliability of exit polls (at least in the U.S.) and often can't resist weaving in an obbligato line of mockery directed at the "conspiracy theorists" who can't seem to understand why we should doubt the exit polls while trusting the votecounts.

The problem with the Great Exit Poll Debate is that it is fated to be inconclusive because *neither* side has access to the evidence that could resolve it: neither raw exit poll data (individual responses to the exit poll questionnaires) nor voter-marked ballots are publicly accessible; both are held to be proprietary and off-limits. So what we have is in essence a concealed counting system alongside a concealed polling system, *neither of which is self-evidently accurate*. It would be something of a credibility draw, except for the fact that the exit pollsters' business model rests rather heavily on the perceived accuracy of their polls, which translates to publishing polls<sup>9</sup> that are at least within spitting distance of the electoral results. Major and particularly *serial* departures from those electoral results—no matter what is said by way of disclaimer that exit polls in the U.S. are not "designed" to approximate

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<sup>8</sup> One explanation worthy of further investigation attributes much of Sanders' caucus-state strength to the personal and public nature of caucus proceedings and the aggressive, at times allegedly intimidating, behavior of Sanders partisans at these events. It is, however, hard to imagine that the Clinton campaign, with the muscle of the DNC behind it, would have wilted in the face of such behavior; and Clinton certainly did not have the luxury of writing off these 12 states.

<sup>9</sup> It is now recognized that, thanks to the work of election forensics analysts, any publicly posted iteration of an exit poll prior to final adjustment to congruence with the votecounts will likely be preserved via screen-capture, thus immortalizing any disparities.

votecounts—are a serious embarrassment, bad for business.<sup>10</sup> Hence the exit pollsters are fanatical about pattern analysis and error correction—they try hard to “get it right” and they have had decades to go about doing that. It is in that context that we must try to comprehend the performance of the exit polls in the E2016 primaries.

In examining the performance of the E2016 primary season exit polls it would be natural to conclude that each party’s primaries had been handled by a *separate* polling outfit, or at least that different methodologies and protocols were employed for the Democratic versus the Republican polls. Of course neither of these things was true: all voters, Democratic and Republican, were polled by the same firm, Edison Research, using the same methodological approach, on the same days, at the same precincts, in the same weather, with the same strict protocols. How then to explain the resulting pattern? Why did the polls perform superbly throughout the run of Republican primaries,<sup>11</sup> while they were such a fiasco in the Democratic primaries that exit polling was *abruptly and quietly canceled* with the elections in New Jersey, New Mexico, and (critically) California remaining on the schedule?<sup>12</sup>

How stark was the contrast? The mean “error” or exit poll-votecount (EP/VC) disparity for the 23 Republican primaries for which data was available was 0.6 percent.<sup>13</sup> In only *two* of the 23 elections were EP/VC disparities outside the Total Survey Error (TSE),<sup>14</sup> about what we would expect from the rules of

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<sup>10</sup> It should of course be noted that voting computer vendors and programmers are under no such scrutiny or pressure, as it is simply presumed that such votecount-poll disparities are the fault of erroneous polls.

<sup>11</sup> Time-stamped screen-capture data, necessary for EP/VC comparison, was available for 23 out of the 25 Republican primaries that were exit polled.

<sup>12</sup> Other primaries not exit polled took place in Delaware, Kentucky, Montana, South Dakota, Oregon, and Puerto Rico. Although cancellation of the exit polls in 19 states in E2012 was noted by the MSM at the time, a search of *NY Times* and *Washington Post* websites revealed not a single article of any genre regarding the sudden cancellation of the 2016 exit polls.

<sup>13</sup> We treated the Republican primaries as a contest of Trump against “the field” of his opponents. We took this approach both because, while Trump was a constant in all of the primaries, the rest of the field varied as candidates dropped out; and because it facilitated an apples-to-apples comparison with the Clinton/Sanders contest. Analysis of the performance of the exit polls in the Republican primaries, although it became somewhat more complex, did not change significantly in result when EP/VC disparities were viewed candidate by candidate.

<sup>14</sup> Total Survey Error, while built on the mathematical Margin of Error (MOE) for a purely random sample, is generally somewhat larger than the MOE because it takes

probability. Of the individual election disparities greater than 1 percent, 11 favored Donald Trump while nine favored his opponents, again the kind of balance indicative of both accurate polling and accurate vote tabulation. This level of performance over a long string of elections confirms the competence of the pollsters and the soundness of their protocols and methodology.<sup>15</sup>

It is a competence and a soundness that seem to have vanished when polling Democratic voters. In the 25 Democratic primaries, the mean error or EP/VC disparity was 6.0 percent, *or ten times that in the Republican primaries*. In 10 of the 25 elections the EP/VC disparities exceeded the Total Survey Error; we would normally expect to see *one* such failure. And of the individual election disparities greater than 1 percent, *three* favored Bernie Sanders while *21* favored Hillary Clinton.<sup>16</sup> You can see why Sanders voters began to wonder what might be happening to their votes, questioning the counting process along with the registration process and the various thumb-on-the-scale party rules.

The Great Exit Poll Debate Redux of course focused on this run of disparities and whether it was in any way probative of systemic problems with the vote counting process. On the one side were those who saw in the exit polls *proof* that the Democratic primaries had been rigged. They looked at the math, much as we did in E2004 and other red-shifted elections of the computer-count era, and saw a pattern of disparities that, from a statistical standpoint, was all but impossible. On the other side were those who saw the exit polls as essentially worthless, crude instruments with no probative value at all when it comes to assessing the accuracy of a given votecount or of the entire vote counting process. As in many such polarized disputes, the truth most likely falls somewhere in between.

A key point of contention—given that the Republican polls were essentially spot-on, attesting to the general competence of the exit polling operation and the soundness of its methodology—was whether the Democratic exit polls were distorted by an “enthusiasm gap” between Clinton and Sanders voters. According to the “enthusiasm gap hypothesis”—similar in nature to the

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into account certain non-random factors in the administration of an exit poll. We employed TSE for both Republican and Democratic primaries.

<sup>15</sup> The exit polls for the hotly-contested 2008 Democratic primaries also exhibited an expected level of accuracy.

<sup>16</sup> For the complete tables, compiled by statistician Theodore Soares, see [www.tdmsresearch.com](http://www.tdmsresearch.com).

(debunked) “reluctant Bush responder” hypothesis of E2004—younger and more enthusiastic Sanders voters were more likely to participate in the exit poll when selected than were older and presumably less enthusiastic Clinton voters.

Of course there is no dispositive evidence either way, since enthusiasm—unlike gender, race, or age—is not a visible trait subject to quantification in those refusing to participate. But we do know that the exit pollsters keep careful count—by gender, race, and approximate age—of refusals to participate, and use this count in weighting their polls. Thus if, as the critics suspect, young voters were more apt to respond to the exit poll when selected, they would be down-weighted accordingly to bring their age cohort in line with its actual proportion of the voting public. And, because enthusiasm and youth were acknowledged to be strongly correlated, the age-based weighting would have neutralized most if not all of any enthusiasm gap.

It is unfortunately the nature of the Great Exit Poll Debate to come down to skirmishes like “reluctant Bush responder” and “Sanders enthusiasm gap,” which most often cannot be decisively settled with the information and data made available.<sup>17</sup> But for those who seek to dispel concerns about the vote counting process, a “tie” is as good as a win. The political timeframe during which elections hang in the balance, such that interest and passions peak, tends to be very short (it often ends with a losing candidate’s concession), while the timeframe for in-depth academic debate over the subtleties of data analysis can be measured in weeks, months, often years. Once a debate becomes “academic” in nature, the political “moment” is almost guaranteed to pass and with it, regardless of whether or how the debate resolves, passes all prospect of action. In the case of the 2016 Democratic primaries, concession took place, the Convention following, a time for “healing” and “pulling together.” The next battle loomed, the next election, the next exercise in blind faith.

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<sup>17</sup> An unprecedented legal action to obtain the data that might resolve such debates, *Johnson v. Edison Media Research, Inc.*, was filed in federal court in Ohio in July 2016, seeking the release by the exit polling firm of the raw data from the 2016 exit polls. It was dismissed in May 2017 (see <https://law.justia.com/cases/federal/district-courts/ohio/ohsdce/2:2016cv00670/195214/8/>). Various other recent legal actions to obtain such hard evidence as voter-marked ballots for votecount verification purposes have also failed. The fate of such legal initiatives reflects the thoroughly non-transparent and non-public status of the vote counting process.

## Oklahoma!

Peter Falk's "Columbo" had a famous tagline. Just when the villain seemed to have wriggled out of the net of suspicion with the perfect alibi and a patronizing smirk, Columbo would cock his head slightly to the side, hesitate a beat, and say, "Ah, just one more thing." Then would come the killer question about some little-noticed detail, and the next thing you knew the bad guy was on his way to the slammer.

In that spirit, we direct our attention to Oklahoma. This otherwise uninteresting (to Democrats at least) red state stands out as the contrarian—one of just a few states where Sanders' votecount *exceeded* his exit poll total and in fact the *most* Sanders-shifted (6.1%) of all the Democratic primaries. This would be unremarkable (every long table has its "least" and "most," seemingly every graph its outlier) except for one factoid, one "little-noticed detail:" *Oklahoma turns out to be the only state on the Democratic primary chart in which the state itself, rather than the vendors or their satellite contractors, plays the principal role in programming the voting computers.*

These are two dots that you don't have to be Columbo to connect: Dot 1) absence of the suspected vector of access to the programming; Dot 2) a reverse EP/VC disparity (i.e., a pattern-defying absence, indeed reversal, of the virtually ubiquitous Clinton-shift). This is quite a correlation.<sup>18</sup> Mere coincidence? Perhaps. But how many such correlations can we brush aside as mere coincidences in the interest of protecting the shield?

Can we also brush aside the stark contrast in exit poll performance for the Democratic and Republican primaries of 2016? Can we brush aside the

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<sup>18</sup> We note that the shift in Oklahoma (6.1%) is significant, near the TSE for the poll. If we conclude that the denial of the vendor-programmed access vector led to a "clean" count, then we would expect an *accurate* exit poll result, not a 6.1% shift. All the more so if there was in fact an "enthusiasm gap" in Sanders' favor, as has been suggested by critics of exit poll-based forensics.

This suggests something even more ominous. We know that exit pollsters study their own error patterns fanatically, and make whatever tweaks to sampling and weighting they believe necessary to avoid the serial embarrassment of continually getting elections "wrong" in the same direction. Does the glaring exception that is Oklahoma then suggest that *other* states, also being subject to such anticipatory tweaking (which in the case of putatively *unrigged* Oklahoma backfired), displayed mitigated exit poll-votecount disparities significantly *smaller* than they would otherwise have been? If so, then the egregious exit poll-votecount disparities throughout the Democratic primaries would be even larger and screaming even louder that electronic votecount manipulation was endemic.

radically different results in observably-counted caucus states? Can we brush aside the pervasive red-shifts of every midterm election since the passage of HAVA in 2002? Can we brush aside the glaring disparities between the forensics of competitive and noncompetitive elections? Can we brush aside the 59 percent of the statewide vote won by a cipher candidate in 2010 or the key senatorial election in which the only explanation left standing for the enormous disparity between hand-counted and opscan-counted ballots was the method of counting itself? Can we brush aside the growing data set of Cumulative Vote Share (CVS) graphs that show the telltale upslope of suspect candidates as precincts get larger and votes consequently get easier to shift without risk of detection? Can we brush aside a sudden presidency-determining flip in votecounts when a state website “went down” in the early morning hours of November 3, 2004 and the votes were rerouted to a “backup” server set up by none other than Karl Rove’s IT guru? How much can we brush aside and continue to sleep at night believing that our democracy is safe and sound?

### **The Election of Donald Trump**

After 15 years of brushing—in the name of ease and convenience, in the name of preserving (at any cost) voter confidence in the electoral process, in the name of elevating the rights of corporations over those of the public—we may have finally brushed ourselves over a cliff.

Donald Trump is, legitimately or illegitimately, in fact our president. And his enablers in Congress are, legitimately or illegitimately, in fact in office. This is, whether by fair play or fraud, the Age of Trump. The nation is, perhaps to even a greater degree than predicted in earlier editions of this book, riven—its people made enemies and divided into red and blue fortresses, as close to war as they are to meaningful and constructive dialogue.

We have, in this and the preceding chapters, traced many of the steps down this path—the rolling, if not always linear, impact of one suspect computer-age election after another—right up to the cliff’s edge. Let us now trace the last big step and tumble, into the 2016 General Election and its still unfolding aftermath.

An election year is made up of innumerable events and constant flux. If we take an alpha-to-omega overview of the 2016 presidential election, the first thing that jumps out from the thousands of event pixels is the fact that America entered 2016 with the near consensus recognition that something serious

needed to be done to deal with runaway economic inequality. The year ended, however, with a president-elect and cabinet carrying water for the 1 percent and wine for the 0.1 percent, portending not merely a step but a giant leap *away* from economic equality and toward outright plutocracy.

The nation that came into the year coalescing around the need to seriously address climate change and the easy availability of guns, exited it in the hands of a climate change denier and new darling of the NRA. A nation that seemed anxious about the relatively mild pay-to-play concerns raised by the Clinton Foundation, wound up with an all-but-branded White House, its chief and ancillary occupants boasting more and deeper conflicts of interest than any in our long history.

In reviewing the year 2016, which culminated shockingly in the Age of Trump, we will want to ask how we wound up, in virtually every dimension, zigging when we meant to zag. How did such a seemingly fundamental reversal of public will (and taste) come to pass? How did the gears of our electoral process mesh (or slip) to lead us to such a pass? Are we here—as virtually every pundit, every best-selling “How Did It Happen?” and “Who Are We?” book tells it—because of some strange but ultimately organic conjunction of developments in our body politic? Did a candidate who got trounced in every debate, boasted of his success as a sexual predator, and made dozens of campaign gaffes, any *one* of which would have sunk the candidacy of any of his forerunners, genuinely manage to secure enough votes to put him over the Electoral College top and into the White House? Did the “Russians” help and, if so, how? Or was it ultimately decided by the trillions of 1s and 0s and the masters (i.e., programmers) of their dance in the dark?

### **The Road to November**

We all experienced the general election campaign of 2016. I have yet to encounter anyone who gave it high marks. For most Americans it was a brutal affair that, even by the low standards of the modern era, broke new ground for mendacity, lack of substance, and, for lack of a better term, personal and political plug-ugliness. Internationally, it was an embarrassment.

While Hillary Clinton generally maintained personal decorum, she rattled around with the cowbells of a festering email investigation and vague suspicions of pay-to-play Clinton Foundation improprieties tied to her tail. In four-and-a-half hours of primetime debates, not once was the question of

climate change posed in any meaningful way, while emails and hot mic tapes and personal threats sucked up the air time.

For Donald Trump's part, it was literally impossible to keep up with the falsehoods he and his surrogates spouted, quite apart from the "fake news" affiliates supporting his campaign. His rallies rang with chants of "Lock her up!" . . . "Drain the swamp!" . . . "Build the wall!" He took on the Muslim parents of a dead American war hero. He gleefully mocked the disabled, including a journalist questioning him at a press conference. He gave vent to the kind of misogyny and bigotry that would have been instantly fatal in any previous campaign at any level. He appeared to celebrate and revel in his own boasts of groping women and unwanted sexual advances bordering on assault. It took the media some time to catch on, but even then there seemed little point to pointing out Trump's daily, sometimes hourly, "inconsistencies." For supporters and detractors alike, it seemed to simply become the new normal.<sup>19</sup>

It was a campaign of scandal, incivility, and mendacity, but any equivalence of conduct portrayed here would be a spectacularly false one. The voters emerged from it all mutually disgusted and more horribly hyperpolarized than at any time in living memory. But Clinton, despite FBI Director James Comey's (late) October Surprise,<sup>20</sup> emerged from the muck with a lead in virtually every poll (and there were scores of them), tracking both the national vote and the key states that were the focus of the battle for the Electoral College majority.

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<sup>19</sup> Trump famously boasted that he could "stand in the middle of Fifth Avenue and shoot someone and I wouldn't lose any voters, okay?" (see [https://www.realclearpolitics.com/video/2016/01/23/trump\\_i\\_could\\_stand\\_in\\_the\\_mid\\_dle\\_of\\_fifth\\_avenue\\_and\\_shoot\\_somebody\\_and\\_i\\_wouldnt\\_lose\\_any\\_voters.html](https://www.realclearpolitics.com/video/2016/01/23/trump_i_could_stand_in_the_mid_dle_of_fifth_avenue_and_shoot_somebody_and_i_wouldnt_lose_any_voters.html)). In retrospect, it appears that he might have been fairly accurate in that assessment, which of course says as much about Trump voters as about Trump himself (see <http://www.newsweek.com/trump-voters-republicans-overall-actually-dont-care-president-shoots-someone-638462>).

<sup>20</sup> Comey revealed, a mere 10 days before the election, that the FBI investigation into Clinton's emails, which went on to turn up nothing, had been reopened (see <https://www.nytimes.com/2016/11/04/us/fbi-james-comey-hillary-clinton.html>).

Comey's explanation, given a year and a half later, for this action, which most analysts believe put Trump in the White House, was that he was concerned that, following what he thought was an all but inevitable Clinton *victory*, it would, if he failed to make the disclosure, appear that he had withheld the information to *protect* her candidacy—and indeed, on the face of it, his position was rock-and-a-hard-place unenviable.

On the eve of the election, Nate Silver's FiveThirtyEight.com<sup>21</sup> (which of all handicappers gave Trump his *best* chance) predicted Clinton wins in the swing states of Wisconsin (84 percent probability), Michigan (80 percent), Pennsylvania (77 percent), North Carolina (55 percent), and Florida (55 percent). Trump's likelihood of pulling out victories in *all* these states was on the order of one in 600. Beyond the numbers, expectations were such that, when a Trump victory became apparent, the words "Shocking" and "Upset" were attached to it in headlines across America.

But in retrospect, given that Trump *won*, it all seems to fit. This is how the industry works, how the narrative comes together and the historical novel is written. In something akin to an argument from design, *because* Trump won, he *must* have had the formula for success<sup>22</sup> and, being the psychological savant that he is, must have known the voters would forgive him his boasts, lies, and trespasses—as of course millions did. There's no denying the existence of a "Trump base." The question is: Was it populous enough to elect him in the states that, given the bent math of the Electoral College, mattered?

### **Screenshot and Shock**

Election integrity advocates approach *every* election with concerns born of the long history of red-flag forensics and suspect results in the era of computerized vote counting. Not just the election integrity crowd, however, but much of America approached Nov. 8, 2016 with concerns about the fidelity of the vote counting process, not the least because Trump himself kept raising the specter of a "rigged" election,<sup>23</sup> going so far as to demur when questioned as to whether he would accept the results of the election should he lose.

There was also substantial media coverage of foreign attempts to "meddle" in the election, including a suspected disinformation campaign and hacking of DNC emails and voter databases. Naturally, this raised the question of whether such meddling could be taken further, even to include interference with the vote counting itself. As Russia or Russian actors were implicated as suspects, and the pro-Trump sympathies of Russian President Vladimir Putin became obvious, the story grew longer legs. Hasty reassurances were provided that,

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<sup>21</sup> See <https://projects.fivethirtyeight.com/2016-election-forecast/>.

<sup>22</sup> In the words of Rep. Peter T. King (R-NY): "[Trump] has a way of getting things done. He had the worst campaign ever. On election night, he was the guy smiling." (as quoted in *The Washington Post*, 3/3/18, "'Pure madness': Dark days inside the White House as Trump shocks and rages," by Philip Rucker, et al).

<sup>23</sup> See <http://www.politico.com/story/2016/10/donald-trump-rigged-election-guide-230302>.

because our voting computers were not hooked up to the internet, vulnerability to Russian or any outside hacking was minimal.

In keeping with the long-standing government/media refusal to acknowledge the possibility of *insider* interference with the vote counting process—that is, by anyone with access to the programming, servicing, or distribution of the equipment—not a word was written or spoken about this corollary concern despite the far greater likelihood that it would present as a vector for manipulation.

Trump’s “shocking” victory was sealed before the dishes were done in the Pacific time zone, and its contours subject to analysis by network pundits before bedtime on the East Coast. This is the boon of computerized voting, giving us the media property known as “Decision 20XX,” an extravaganza to rival the Super Bowl. Election forensics analysts (self included) forego the entertainment value of Election Night in order to capture the vital data before it disappears.

As explained earlier in this book, the first public posting of exit poll results provides an alternate measure of the intent of the electorate, a baseline against which to attempt to check and verify (one hopes) the reported electoral results, which have been tallied unobservably by privately programmed computers. In other countries, such exit poll data is relied upon routinely to verify the validity of official vote counts.<sup>24</sup>

In America, presumably because here in such an unimpeachable democracy no such check is needed, the exit poll results are “adjusted” to ultimate congruence with the vote tallies, and this process begins from the moment the polls close and the exit poll is first posted (if not sooner in some cases). Any disparities between the unadjusted exit polls and the vote counts are regarded as *exit poll* errors (the vote counts being unquestioned and, by a seemingly universal tacit agreement, unquestionable) that need to be fixed if the exit polls are to become “accurate” and thus useful for demographic and political analysis of the electorate. Once the adjustment process begins, no record of the relatively pristine, unadjusted exit poll results is retained—unless those results are screencaptured, which is what forensics analysts do.

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<sup>24</sup> See [https://en.wikipedia.org/wiki/Exit\\_poll](https://en.wikipedia.org/wiki/Exit_poll).

The exit polls we screencaptured as each state's polls closed and they were posted, projected a solid Clinton win, a better than 3 million vote popular vote margin and over 300 Electoral College votes (270 being needed for a majority). Experience, however, counseled caution: In the past, red shift changes have diminished such Democratic exit poll margins and even reversed apparent victories. We witnessed, for example, a 4 percent John Kerry lead over George Bush flip at midnight in 2004, and with it the presidential election.<sup>25</sup> And now we began to see signs of such reversals, not in a single state as in 2004, but in a *swath* of states, the ones that everyone understood would be decisive in electing our next president.

The polls in all the key states had closed and the work of screencapturing and spreadsheeting the key exit polls was done. Now, the vote tallies rolled in and the picture began to emerge from the darkroom developing tank with ever increasing clarity: Clinton would win the popular vote, the only question being how embarrassingly large for Trump her ultimate margin would turn out to be. But, courtesy of a table-run of victories ranging from narrow to razor-thin in what Nate Silver had termed Clinton's "firewall" states, Trump would capture an Electoral College majority and become our next president.

### **Red Shift on Steroids**

By early morning I had begun circulating tables documenting the most egregious "red shift" exit poll-to-votecount disparities ever recorded in the computerized voting era. Even for those accustomed to the mysterious and pervasive rightward shifts between exit poll and votecount results, the results were eye-popping.

Ohio had shifted from an exit poll dead heat to an 8.1 percent Trump win; North Carolina from a 2.1 percent Clinton win to a 3.6 percent Trump win; Pennsylvania from 4.4 percent Clinton to 0.7 percent Trump; Wisconsin from 3.9 percent Clinton to 0.7 percent Trump; Florida from 1.3 percent Clinton to 1.2 percent Trump; and Michigan from a dead heat to 0.3 percent Trump. The table below presents the shift in four key states that essentially decided the election:

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<sup>25</sup> See <https://www.commondreams.org/views06/0601-34.htm>.

2016 Presidential Election Exit Poll/Votecount Comparison				
Compiled by Jonathan D. Simon www.CodeRed2016.com				
State (Exit Poll Sample Size and Margin of Error, including multiplier for cluster effect)	Exit Poll Margin (+ Clinton, - Trump)	Vote Count Margin (+ Clinton, - Trump)	Red Shift (+ indicates shift favoring Trump)*	Electoral College Votes At Stake
National Popular Vote (21753, 0.9%)	3.2%	2.1%	1.1%	0
NC (3967, 2.0%)	2.1%	-3.6%	5.7%	15
PA (2613, 2.5%)	4.4%	-0.7%	5.1%	20
WI (2981, 2.3%)	3.9%	-0.7%	4.6%	10
FL (3941, 2.0%)	1.3%	-1.2%	2.5%	29
				<b>Total 74</b>
Official Electoral College Votes As Tabulated	Clinton 232	Trump 306	Trump + 74	<b>President Trump</b>
Electoral College Votes With NC,PA,WI,FL "Flipped"	Clinton 306	Trump 232	Clinton + 74	<b>President Clinton</b>
Exit Poll Source: NEP; Votecount Source: USElectionAtlas.org; Vote Count % updated to 12/19/16 11:49 AM EST.				
A positive percentage in the "Red Shift" column indicates a votecount margin higher for Trump than was his exit poll margin.				
<b>* A RED number in the "Red Shift" column indicates an exit poll-votecount shift with a 50% or greater likelihood of altering the outcome.</b>				

It must be noted that in Florida and Michigan a very small portion of each state extends from the Eastern into the Central time zone. The effect of this is to delay the first public posting of exit poll results until an hour after the polls have closed and votecount reporting begun in the main part of the state. This, in turn, allows the adjustment process toward congruence with the vote counts to begin well prior to first public posting of the exit poll results and consequently reduces the exit poll-to-votecount disparity, compromising the utility of the exit polls as a baseline for votecount verification in these states. Indeed, in the era of computerized tabulation and internet-based reporting, so much of the total vote has been counted in these states that the exit polls,

even if initially far out of line with the vote totals, will closely approach congruence with the votecounts by the time they are posted and can be screencaptured. This is in fact what we observed in Michigan and Florida in 2016, although even the substantial adjustment process left modest red shifts in both states.

Not only were the red shifts in Ohio, North Carolina, Pennsylvania, Wisconsin, and even compromised Florida well beyond the margin of error for the exit polls, in the states of North Carolina, Pennsylvania, Wisconsin, and Florida, those shifts clearly resulted in reversals of outcome, such that if the exit polls rather than the votecounts were accurately capturing voter intent, the Electoral College majority would have gone to Clinton and it would not have been close. Ultimately, a mere 77,744 votes out of many millions in the soon-to-be-recounted states of Michigan, Pennsylvania, and Wisconsin determined the outcome of the election.<sup>26</sup>

As noted above in my examination of the 2016 primaries, exit polls in the United States have been subject to devaluation and, often, dismissal based on the assumption that the causes for their chronic (and unidirectional) “inaccuracy” are all intrinsic to the exit polls themselves—errors in design or execution. In the primaries, the probative value of the exit polls was boosted greatly by the finding that they were highly accurate throughout the Republican primaries. Neither design nor execution seemed to explain why they were wildly inaccurate for the Democratic primaries, even though administered by the same firm, with the same interviewers, on the same days, at the same precincts, using the same protocols.

A similar baseline was available for the general election: Although 22 “safe” states were not exit polled specifically, depriving us of the kind of “safe state baseline” that was so telling in 2004,<sup>27</sup> a *national sample* was drawn, representative of the electorate throughout the United States.

It was quickly apparent that the red shift for America as a whole — which, of course, included all the safe states where manipulation would have been, from an Electoral College standpoint, pointless — was far smaller than that found in the key swing states cited above. Indeed, once the final votecounts were compiled, swelling Clinton’s popular vote victory to just short of 3 million

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<sup>26</sup> See [https://ballotpedia.org/Presidential\\_election\\_by\\_state,\\_2016](https://ballotpedia.org/Presidential_election_by_state,_2016).

<sup>27</sup> See <http://freepress.org/departments/display/19/2004/997>.

votes,<sup>28</sup> the disparity between the national exit poll and the national vote count wound up at just 1.1 percent — just about the expected Total Survey Error for a poll of that sample size.<sup>29</sup>

Thus, the same poll that had performed accurately and commendably across much of the country<sup>30</sup> had apparently broken down spectacularly and

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<sup>28</sup> The official Clinton-Trump popular vote margin was 2,868,518 (see <https://uselectionatlas.org/2016.php>).

<sup>29</sup> The official sample size of 21,753 would yield a mathematical margin of error of approximately 0.7% (see [www.raosoft.com/sample\\_size.html](http://www.raosoft.com/sample_size.html)), which would translate to a total survey error (including such factors as cluster sampling) of approximately 1.1%. When one remembers that any manipulations in putatively targeted swing states, where the statewide exit poll-votecount disparities greatly exceeded the respective total survey errors, would also increase the cumulative disparity in the nationwide poll, it becomes evident that in the noncompetitive “baseline” states as measured in the nationwide poll, the exit poll-votecount disparity was well within the poll’s total survey error—the poll performed splendidly, as we would expect given the cumulative expertise of its designers.

You simply cannot look at such a pattern, which I call a second-order disparity, without asking *why* the apparent breakdown of the polls so perfectly correlates with the states that “mattered.” I cannot state strongly enough how suspect such a meta-pattern is.

<sup>30</sup> A great deal has been made of the apparently egregious over-representation of college graduates in the National exit poll sample. With an “Aha!” that could be heard on Mars, the poll was declared “garbage” and tossed hastily and permanently in the shredder because 50% of its respondents had declared themselves to be (at least) college grads. The impact of education level on candidate choice was modest (about the equivalent of gender and far below race), but this did not stop the critics from fastening on the 50% figure (which it must be said would not even have been available to fasten on were the exit polls as opaque in their revelations as are the votecounts), which they calculated implied an unrealistic rate of turnout among college grads.

What the scoffing and whewing herd apparently failed to notice was that the exit poll they had just trashed—along, it soon became clear, with every *other* exit poll ever conducted or to be conducted in the United States—was *accurate!* That’s right, accurate. As has been noted, the unadjusted National exit poll approximated Clinton’s popular vote victory margin within 1.1%. It was accurate enough as to require hardly any adjustment—and, if it hadn’t been for the major disparities in the Trump table-run battleground states, would not have required any adjustment at all.

How, then, to read this riddle? How could a poll with such an apparent demographic goof wind up so close to the mark? What no critic apparently understood, or wanted to understand, is something very basic and essential to exit poll methodology: multiple stratification (weighting). Exit pollsters know enough not to *expect* equivalent response rates across race, age, gender, income, education, and partisanship groups. They use data-rich models, as in many other sciences, to weight their samples accordingly. It has been my observation that the aggregate impact of these multiple weightings—because they are grounded at least in part on demographic data derived from prior exit polls that have been adjusted rightward to congruence with red-shifted votecounts—tends to be rightward. These weightings tug against one another—so, for example, the sample

unidirectionally *where it counted*—in the key swing states that were logically the suspect targets for mistabulation or, as Trump would have had no trouble calling it, “rigging.”

### Jill Stein Steps Up

Hillary Clinton, being a Democrat and not Donald Trump, lost no time in conceding the election.<sup>31</sup> President Barack Obama dutifully gave Trump the White House tour and spoke of a “smooth transition” as shockwaves spread across the country and around the world.

As the post-election days began to pass and the pundits pitched around for reasons “Why,” election integrity advocates and forensics specialists continued to examine the numbers and ask “Whether?” We recognized that, as usual, the election circus was pulling up stakes and leaving town, never having verified the unseen and unobservable counting of tens of millions of votes. We also recognized that, worse still, the airwaves were flooded with theories and explanations for the shocking outcome, which had the profound side-effect of

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might wind up over-representing the college-educated but under-representing non-white voters. The art and science of exit polling lies in getting those balances right.

It’s a complex process and you could say, I suppose, “the secret’s in the sauce” (although, again, this sauce is far *less* secret than the vote counts themselves—the numbers are there to inspect and compare, at <https://www.cnn.com/election/2016/results/exit-polls/national/president> for the adjusted National poll and on my website <https://www.CodeRed2018.com> for the unadjusted screenshots, along with a more complete analysis of the polling methodology).

But you can also say “the proof’s in the pudding.” The fact is that the National exit poll—the one torn apart by a posse of critics sorely lacking in understanding of exit poll methodology, many of whom have been hell-bent on discrediting exit polls as a verification tool since 2004—got it *right*, while the exit polls by the same firm, using the same methodological “sauce,” in the critical battleground states table-run by Trump were way *off*, *all* in the same direction. That is a damning second-order comparative, and the best evidence we can *get* from a system determined to withhold all its “hard” evidence, a process *designed* for concealment. So far, to my knowledge, no one has proposed a benign explanation for this, or numerous other, telling *patterns* of disparity.

<sup>31</sup> One can imagine how *Trump* would have responded had he found himself in Clinton’s position, a “loser,” having won the popular vote by nearly 3 million votes and lost three states and the presidency by fractions of a percentage point each, with the exit polls in each case indicating his victory—leaving out of it the “millions of illegal voters” he suspected of lining up to vote (twice) against him. For a glimpse at how it would likely have gone down, see <https://www.alternet.org/election-2016/what-would-trump-do-how-we-respond-suspect-election>.

quickly *validating* by assumption that which had in no way been *verified* in fact.<sup>32</sup>

Reports had begun to come in about machine breakdowns, voting problems, large numbers of uncounted provisional ballots, suspiciously high (and low) turnout rates, and big clusters of presidential “undervotes” (where votes are recorded for down-ballot offices but none for president). But what was the import of these glimpses of what appeared to be targeted dysfunction?

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<sup>32</sup> Given that the election of Trump was a political earthquake all but off the Richter scale, followed by an unending succession of aftershocks as it became clear (to anyone still in doubt) what his presidency would mean, it is not surprising that the pundits and analysts have kept at it and show no signs of letting up: books, papers, podcatsts, columns and tweets continue to pile up “explaining” the organic forces behind Trump’s election. Clinton’s impressive tactical and strategic blunders, the rage of white males, the economic pessimism and anomie of Middle America, the brilliance of Trump’s demagoguery, and even the alleged Russian “meddling” continue to compete and combine as factors in Trump’s win. Other analysts explain why we can no longer trust polls of any sort. Still others make recommendations for what the Democrats need to do to reverse their fate.

It is a good deal more than a cottage industry. And every book, every chapter, every page, every sentence, every word of this great edifice of scholarship and commentary rests, in its very *raison d’etre*, on the presumed *fact* that enough voters cast their votes for Donald Trump in the states that mattered to secure a legitimate Electoral College victory and the White House. That comes to a megaton of career weight and reputation with a compelling vested interest in making sure that that *fact* remains foundational and unquestioned.

Which is not to say that most of these observations, analyses, and arguments are not fundamentally *true*. There is little doubt, to take one slice from this post-mortem pie as an example, that Clinton ran a tactically-challenged campaign—raising Big Money from fatcats and luminaries while ignoring actual voters (when not mocking them as “deplorables”) and seemingly avoiding some key swing states like the plague. No appearances in *Wisconsin* of all places looks braindead in retrospect—though, interestingly, Clinton went all-out in Pennsylvania and lost there anyway; and Bush barely set *foot* in Ohio in 2004 but “*won*” there, rescued from paying the ultimate electoral price when Rove’s platoons of evangelical phantoms magically flocked to the polls *after dinner* to flip the votecounts and alter the course of history).

But there would be nothing much to analyze, certainly nothing worthy of a best-seller, if, like Bush, Clinton had *won* those razor-thin, pivotal states. The “How Did Trump Win?” Annex to the Library of Congress is mostly well-researched and well-reasoned, fascinating and clever work. But if it were discovered that Trump did not in fact “win” ... well it takes only a tiny little factual pin like that to pop a gigantic analytic balloon. Nor are the “organic” and “artificial” explanations contradictory or mutually exclusive. Trump was so profoundly flawed a candidate that the election should not have been *close*. A number of organic factors did combine to make it close enough for vote-count manipulation to have a decisive impact, and, as has been shown, there is independent evidence for that impact in the telltale *pattern* of exit poll-vote-count disparities that we ignore at our peril.

It was clear that the openly touted tactics of voter suppression had reaped enormous dividends for Trump and his fellow Republicans. But the reality is that the remedies for any such schemes, even if they were found to be law-breaking rather than simply legislatively or administratively shrewd, would be, as in the past, legal or administrative penalties, wrist-slaps on this or that clerk or official—not any meaningful amendment to the tally of votes or fundamental reform of the voting system. Earlier in the year, Austria’s Supreme Court had decreed a “re-vote” when hints of electoral improprieties had surfaced in that nation’s presidential election,<sup>33</sup> but that was not about to happen in the United States of America.

The question became whether, apart from the general odor of Jim Crow disenfranchisement, there was any evidence of the kind of improprieties that would be *actionable*, leading to remedies that would alter electoral results or expose a nationally unpalatable type and degree of electoral fraud.

It was clear that such evidence—“hard evidence,” as we call it to distinguish it from statistical evidence, the probative value of which is discounted to near zero by governmental and media gatekeepers concerned above all about undermining public “confidence” in the electoral process—could emerge only from recounting of all ballots in places where the statistical red flags were flying. This was, after all, the whole point of *having* paper ballots: “If there’s any question,” the reassuring line always went, “they can always be recounted.”

Green Party presidential candidate Jill Stein, having considered the recommendations of election forensics analysts who had begun to drill down into unsettling county- and precinct-level data, petitioned for recounts in the three key states of Wisconsin, Michigan, and Pennsylvania.<sup>34</sup>

The motivation for these recounts, in which the Clinton campaign predictably played no role other than that of an observer, was to address issues of electoral

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<sup>33</sup> See <https://www.csmonitor.com/World/Global-News/2016/0702/In-post-Brexit-Europe-why-Austria-s-presidential-re-vote-matters>.

<sup>34</sup> As will be seen, the prohibitive expense and tight deadlines associated with recount efforts made it impossible for Stein to undertake recounts in Florida, North Carolina, and Ohio—three *other* states where statistical evidence pointed to questionable results. Clinton, who could have afforded—both financially and in the sense that she held no expectations of a political future that could be torpedoed by the “sore loser” label—to pursue recounts in all of these venues, exhibited no interest in doing so.

integrity and help shine light on the hidden processes of vote counting in places where less direct evidence pointed to problems. Many hoped, and some feared, that the recount process might result in a reversal of outcome in the three states and, by virtue of that, in the election itself.

For Stein and the electoral integrity community, that reversal could only come about as an incidental byproduct of a far more fundamental revelation about the validity of our vote counting system.

### **Recount Not a Real Count**

That there was broad-based support for the recount effort was immediately obvious. Stein raised more than \$7.3 million from over 161,000 small donors in less than three weeks (contributions were limited by federal law to \$2,700 and the average contribution received was \$45).<sup>35</sup> It also quickly became clear that there would be ferocious resistance to the achievement of Stein’s goal.

Although Trump had himself raised suspicions that the election could be “rigged,” and was claiming that he would have won the *popular vote* if not for the “millions of illegal voters” casting ballots for Clinton, the Trump campaign showed little interest in permitting the recounting of any ballots to substantiate this claim. Indeed, the Trump campaign and/or its surrogates promptly filed suit in each of the three states to block or restrict the recount efforts.<sup>36</sup>

Given what Trump stood to lose, this behavior was not especially surprising. It was the behavior of the *rest* of officialdom — administrative and judicial — that made a mockery of both electoral integrity and due process.

“Officialdom” comes down to individuals and, particularly in the corridors of power, individuals tend to sort themselves into parties and exhibit strong partisan allegiance. Who were the officials in whose hands the fate of the 2016 recounts rested? This is where the taproot of computerized elections grows long, snaking its way back through midterm and down-ballot elections for 15 years.

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<sup>35</sup> See [http://www.jill2016.com/fundraising\\_ends](http://www.jill2016.com/fundraising_ends).

<sup>36</sup> See <https://www.independent.co.uk/news/people/donald-trump-lawsuit-recount-michigan-stop-a7452651.html>.

In every midterm election since the turn of the century—2002, 2006, 2010, 2014—Republican performance has far exceeded consensus expectations, tracking polling, and exit polling. All but 2006 were Republican routs. And 2006, with President George W. Bush’s approval rating at a dismal 36 percent,<sup>37</sup> was far less than the expected Democratic landslide. In every case, pundits scrambled post-election to explain the unanticipated reddening of America. In 2014, no amount of scrambling could make sense of the result: With a congressional job approval rating of 8 percent,<sup>38</sup> Republicans saw 220 out of 222 members of their U.S. House majority re-elected—a better than 99 percent re-election rate on the back of that 8 percent approval rating—and actually gained 13 seats<sup>39</sup> overall!

During President Obama’s eight-year tenure, Democratic losses at all down-ballot levels were staggering:<sup>40</sup> nine U.S. Senate seats; 62 U.S. House seats; 12 governor’s mansions; control of 15 state upper houses and 14 state lower houses; and a net of 968 state legislative seats lost. The carnage was far worse than under any other president of either party in our history.

You would think that Obama had been a national pariah, his tenure marked by incompetence, misconduct, and catastrophe. But Obama, although an outraged sub-stratum of the voting public may have found him guilty of governing while black, was overall a consistently popular president. He left office with an approval rating of *59 percent* and never in his eight-year tenure had the number fallen below 40 percent.<sup>41</sup> It simply does not add up or follow any previously comprehended political geometry that his years were such an unmitigated electoral disaster for Democratic office-holders at every other level of the political ladder.

In the computerized voting era, irrespective of events and the flux of public opinion, the Democrats have progressively surrendered control of the down-ballot political infrastructure of America to Republicans — in fact, to the increasingly radical Republicans who have displaced in primary election battles virtually all moderates in the party ranks. Nowhere has this rolling coup been more spectacular than in formerly “blue” states like Wisconsin and Michigan,

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<sup>37</sup> See [http://www.realclearpolitics.com/epolls/other/president\\_bush\\_job\\_approval-904.html#!](http://www.realclearpolitics.com/epolls/other/president_bush_job_approval-904.html#!).

<sup>38</sup> See [https://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/sulji6cqrq/trackingreport.pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/sulji6cqrq/trackingreport.pdf).

<sup>39</sup> See [https://ballotpedia.org/United\\_States\\_House\\_of\\_Representatives\\_elections,\\_2014#Election\\_results](https://ballotpedia.org/United_States_House_of_Representatives_elections,_2014#Election_results).

<sup>40</sup> See [https://www.washingtonpost.com/news/the-fix/wp/2016/11/10/the-decimation-of-the-democratic-party-visualized/?utm\\_term=.f654c153b319](https://www.washingtonpost.com/news/the-fix/wp/2016/11/10/the-decimation-of-the-democratic-party-visualized/?utm_term=.f654c153b319).

<sup>41</sup> See [https://www.realclearpolitics.com/epolls/other/president\\_obama\\_job\\_approval-1044.html](https://www.realclearpolitics.com/epolls/other/president_obama_job_approval-1044.html).

now bright-red Republican trifectas.<sup>42</sup> Such power is of great utility in controlling, both legislatively and judicially, the electoral process—including, as we witnessed in December 2016, recounts.

While Jill Stein was not so naïve as to suppose that her path through Wisconsin, Michigan, and Pennsylvania would be strewn with rose petals, nothing could prepare her, her legal team, or the election integrity specialists providing support, for what ensued. The following list of impediments is, in the interests of space, highly selective:

- Ruling by a Republican Wisconsin judge that—despite her “personal opinions” and while she could recommend hand recounting as the “gold standard”—she would nevertheless permit counties to decide whether to follow that recommendation or just run the ballots back through the same machines that had counted them initially.<sup>43</sup>
- Subsequent refusal to hand count by some of the largest counties in Wisconsin, including counties with the brightest forensic red flags—e.g., Outagamie, Brown, and Rock—where Trump voteshares dramatically exceeded expectations based on past voting patterns. Clerks in these counties “recounted” votes by running the ballots back through the same optical scanners that had produced the suspect first counts. All told, *half* of Wisconsin’s ballots escaped manual recount, and that half was chosen not at random but by county administrators—which is very much like a bank auditor giving the *bank* the choice of which half of its accounts the auditor can inspect. Fred Woodhams, spokesman for Michigan’s secretary of state, defended machine recounts in that state, reasoning that “machines are generally agreed to be more accurate than human beings.”<sup>44</sup>
- Once the Stein campaign had, with surprising rapidity, raised over \$6 million to cover the recount expenses in a matter of days, Wisconsin suddenly jacked up its bill from an estimated \$1 million<sup>45</sup> to \$3.5

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<sup>42</sup> The term of art used to indicate single-party control of the executive branch and both houses of the state legislature.

<sup>43</sup> See <https://www.reuters.com/article/us-usa-election-recount/judge-lets-wisconsin-officials-decide-how-to-perform-presidential-vote-recount-idUSKBN13P0FM>.

<sup>44</sup> See <http://www.detroitnews.com/story/news/politics/2016/12/28/stein-audit/95917714/>.

<sup>45</sup> See [https://www.buzzfeed.com/claudiakoerner/jill-stein-has-raised-more-than-15-million-to-fund-recounts?utm\\_term=.frv4ePPy51#.beYre44wY6](https://www.buzzfeed.com/claudiakoerner/jill-stein-has-raised-more-than-15-million-to-fund-recounts?utm_term=.frv4ePPy51#.beYre44wY6).

million.<sup>46</sup> In 2011, Wisconsin had charged less than \$600,000 for a full statewide hand recount,<sup>47</sup> and was now requiring the up-front payment of more than *six* times that amount for a less laborious mixed machine/hand recount of just twice the number of cast ballots. Certain counties, under Republican control, led the way: Racine County, for example, charged more than 50 times as much to count by machine as it had charged for its last county-wide recount, which was done by hand.<sup>48</sup> These ransoms had the effect of draining Stein’s recount funds and thus making it harder to meet administrative and judicial fees levied by other recount states, as well as precluding completely any hopes of initiating recounts or contests in other suspect states like Florida and North Carolina.<sup>49</sup>

- Suits were filed by the Trump campaign or its surrogates to block recounts in Wisconsin, Pennsylvania, and Michigan. The legal expense associated with adequately responding to such suits, and appealing lower-court losses, was prohibitive.<sup>50</sup>
- Pennsylvania law was interpreted to require that at least three voters in *every one* of the state’s more than 9,000 precincts had to file a petition to proceed with any recount at all.<sup>51</sup>
- Pennsylvania state court required that Stein post a \$1 million bond before the court would consider her petition for a statewide recount.<sup>52</sup>
- A Michigan court halted the recount in that state on the legal basis that Stein couldn’t win even if some votes had been miscounted

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<sup>46</sup> See <https://www.wpr.org/wisconsin-officials-set-timeline-presidential-recount>.

<sup>47</sup> See <https://www.bustle.com/articles/197135-how-much-does-a-vote-recount-cost-wisconsin-is-doing-a-second-tally-of-the-election>.

<sup>48</sup> See <http://elections.wi.gov/node/4448>.

<sup>49</sup> That such was the intent was further evidenced when Wisconsin, acknowledging its gross overestimate of the recount’s cost in requiring the \$3.5 million payment from Stein, subsequently refunded \$1.5 million, or over 40% of her payment. Of course by this time all other filing deadlines had passed and the \$1.5 million held ransom could no longer be used to “make trouble” in any other state. See <http://elections.wi.gov/node/4885>, which also offers up a brief, and thoroughly unpersuasive, explanation for the overcharge.

<sup>50</sup> See <https://www.nbcchicago.com/news/national-international/Michigan-Trump-Stein-Clinton-Recount-Effort-404258056.html>.

<sup>51</sup> See [https://www.realclearpolitics.com/video/2016/11/28/fncs\\_carl\\_cameron\\_pennsylvania\\_laws\\_make\\_recount\\_next\\_to\\_impossible.html](https://www.realclearpolitics.com/video/2016/11/28/fncs_carl_cameron_pennsylvania_laws_make_recount_next_to_impossible.html).

<sup>52</sup> See <https://www.nytimes.com/2016/12/03/us/jill-stein-pennsylvania-recount.html>.

(there is no such requirement in applicable state law), and that no credible evidence of fraud (which, of course, was precisely what the recount was looking for) had been presented.<sup>53</sup>

- The Michigan Court of Appeals affirmed that decision on a straight three-to-two party-line vote,<sup>54</sup> ruling that Stein was not “an aggrieved candidate.”<sup>55</sup>
- A Bush-appointed federal judge stated in his ruling, effectively ending the recount in that state before it started, that it “borders on the irrational” to suspect hacking occurred in Pennsylvania, where the vast majority of ballots were electronic and unable to be recounted—while ignoring tens of thousands of provisional (paper) ballots, which *could* have been recounted.<sup>56</sup>

The result of these and a host of other financial, administrative, operational, and judicial roadblocks was that in one state, Wisconsin, officials chose which ballots to actually recount and which to just run through the computers again (begging the question of the basis on which those decisions were made), and in the other two states the recounts were blocked almost entirely. Trump went to the mat to block the recounts; Clinton did not lift a finger to protect them; and, for the most part, partisan judges and administrators were left to make the call on how or whether ballots—where they existed—would be reviewed.

The multi-level, multi-branch full-court-press to keep the recounts from happening does not betoken a high level of confidence in either the electoral outcomes the recounts were attempting to verify or the electoral processes that generated those outcomes. What it makes all too clear, however, is the critical importance of partisan control on the state and local levels, achieved by the steady capture of down-ballot offices in elections for which there are no effective forensic baselines, and which receive essentially no scrutiny. The election of Donald Trump in 2016 placed a capstone on the edifice of a

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<sup>53</sup> See <https://www.cnn.com/2016/12/08/politics/michigan-election-recount/index.html>.

<sup>54</sup> See <https://www.nbcnews.com/politics/politics-news/michigan-supreme-court-denies-jill-stein-recount-appeal-n694251>.

<sup>55</sup> See <https://www.freep.com/story/news/politics/2016/12/06/trump-schuette-michigan-recount-election/95048550/>.

<sup>56</sup> See <https://www.cnn.com/2016/12/12/politics/pennsylvania-recount-blocked-jill-stein/index.html>.

“permanent Republican majority,”<sup>57</sup> to borrow a phrase from Karl Rove,<sup>58</sup> that has been built brick by brick, obscure election by obscure election, since the dawn of the computerized voting era.

Stein, for her troubles, was publicly accused of running a personal-enrichment “scam” on the one hand (which recalled the Humphrey Bogart line about getting his teeth knocked out and then being kicked in the stomach for mumbling) and doing Clinton’s bidding on the other—neither of which held a grain of truth. The media seemed to breathe a collective sigh of relief when the crippled and farcical recounts ended, having produced no earth-shaking changes in results. Few bothered to note that the “recounts” were shams, and fewer still expressed any concern, let alone outrage, that this should be the case.

### **Did the Russians Really Come?**

While the recount efforts were being beaten back and squelched, the “Russian meddling” story was gathering steam. Various new semi-public investigations got underway, joining others that had been simmering on the secret counterintelligence stove. “RussiaGate” has its own distorted-mirrors Fun House in the Age of Trump Theme Park. Whole books could be, and have been, written following the allegations, revelations, refutations, implications, and bloviations to date. If anyone, including Special Counsel Robert Mueller, knows what shoes will drop, how big, how many, and when, he or she is not telling.

The gist of it is that the intelligence community seems prepared to stake its reputation on the charge that various Russians, more likely than not to have been acting at the behest of the Kremlin, went to bat for Donald Trump and against Hillary Clinton in a variety of ways. Indictments have so far come down charging attempts to influence voters through various social media messaging schemes<sup>59</sup>—essentially the most indirect and therefore least pernicious form of meddling (and, of course, something the U.S. has been doing for decades in various nations around the world).<sup>60</sup> There are also investigations into the

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<sup>57</sup> See <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/17/AR2007081701713.html>.

<sup>58</sup> See generally, James Moore and Wayne Slater: *The Architect: Karl Rove and the Master Plan for Absolute Power*, at <https://www.amazon.com/dp/0307237923>.

<sup>59</sup> See <https://www.usatoday.com/story/news/politics/2018/02/16/read-robert-muellers-indictment-13-russian-nationals-election-meddling/346688002/>.

<sup>60</sup> See <https://www.nytimes.com/2018/02/17/sunday-review/russia-isnt-the-only-one-meddling-in-elections-we-do-it-too.html>.

hacking of DNC servers and various personal email accounts; possible funneling of funds to various pro-Trump organizations such as the NRA; and apparent attempts to hack into state voter databases.<sup>61</sup> Hanging over all of it, the word “collusion”—the ultimate question of whether Trump and/or his campaign, associates, or family had knowledge of, or took part in, any of this skullduggery.

Shadowy, tantalizing, riveting stuff! Some argue that Trump is *acting* so guilty—firing FBI Director James Comey, having to be put into a virtual chokehold to prevent his firing of Mueller, refusing to release his tax returns, screaming “WITCH HUNT!” and “NO COLLUSION!” at every turn—that he must be in it up to his eyeballs. Some, on the other hand, see RussiaGate as a neocon or even “Deep State” plot to revive Russia as a global enemy, make sure Trump was preempted in his signaled embrace of Putin, and gin up “Cold War 2.0.” And finally someone thought to ask, “What about E2018?” It appears that what the Russians did (or didn’t) meddle with once, they could very well meddle (or not meddle) with again. And what about the North Koreans, the Chinese, the Iranians, Liechtenstein?!

Lost in all this is a fundamental absurdity. However vulnerable E2016 may have been (and E2018 and E2020 may yet be) to foreign states or outsiders hacking our computerized vote-counting processes, those processes were—and are—far more vulnerable to the “meddling” of insiders with far easier access to the partisan, proprietary, pitch-dark cyberspace in which they take place. And they have *been* this vulnerable to domestic operatives since the dawn of the computerized vote-counting era, long before even the most ardent cold-warrior is alleging the Russians took an interest or hatched a plan. Yet all attention is focused on the Russians—what they may have done and what they might do—and *none* on those with a short, direct pipeline into the system and the luxury of *programming* in, rather than hacking in, election theft. It is as if, in setting out to guard our electoral house, we are checking every window for signs of forced entry while ignoring completely the crew of shady characters with keys to the front door. It is a security plan worthy of Inspector Clouseau.

Actually, though, we haven’t even been doing much of a job of checking the *windows*. The public has been fed at every turn some version of the “there’s no evidence that any votes were actually affected or electoral results changed” line. The “Russians” may have tried to get into our *heads*, but there was no way

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<sup>61</sup> See <https://www.nbcnews.com/politics/elections/russians-penetrated-u-s-voter-systems-says-top-u-s-n845721>.

they could have gotten into our opscans, DREs, or central tabulators. See, our voting equipment is so decentralized and, what's more, it's not hooked up to the internet—which means that it's not vulnerable to foreign state (or individual) hacking. Whew! Such assurance being given first by none other than then-FBI Director James Comey,<sup>62</sup> one could almost hear the “Praise the Lord!” Of course the Obama administration echoed and re-echoed that blanket reassurance. Voters, be confident!

The only problem was that neither “whew” was true. Eighty percent of the equipment was produced by two outfits, ES&S and Dominion Voting, which held the keys to its programming and were potential vectors for manipulation by insiders and outsiders alike. And it turns out that the ES&S DS200 optical scanners, used in Wisconsin and elsewhere, are indeed equipped with a cellular phone signal modem that exposes them and their programming to outsider hacking and is an effective connection to the internet.<sup>63</sup> Further, as IT experts like Andrew Appel have made clear, even individual voting machines that are *not* modem-equipped or directly connected to the internet have to be *programmed*, most often with code uploaded from computers that *are* connected to the internet, providing yet another vector of attack.<sup>64</sup>

Then there are the streams of vote counts from the precinct to the county and state levels, which often pass through an internet transmission pipeline, leaving the data vulnerable to internet-based hacking, commonly known as a man-in-the-middle attack. Central tabulators are particularly vulnerable and, because the internet provides a two-way connection, it is possible for hackers targeting central tabulators to simultaneously alter the upstream data in precinct computers during its upload—thereby making sure that altered aggregate data reconciles with its correspondingly altered precinct-level sources in the (unlikely) event of investigation.

Apart from telling us that the equipment is decentralized and not hooked up to the internet, the Department of Homeland Security took pains repeatedly to assure us that, any vulnerabilities or attempted intrusions notwithstanding, it “had found no evidence that any votes were actually affected, or any election

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<sup>62</sup> See <http://www.homelandsecuritynewswire.com/dr20160929-hackers-poking-around-u-s-voter-registration-sites-in-more-than-a-dozen-states-comey>.

<sup>63</sup> See <https://www.alternet.org/it-doesnt-take-foreign-government-hack-our-flimsy-election-system>.

<sup>64</sup> See <https://freedom-to-tinker.com/2016/09/20/which-voting-machines-can-be-hacked-through-the-internet/>.

outcomes changed.” In somewhat finer print, DHS acknowledged that it had found no such evidence *because it had made a command decision not to look for it*.<sup>65</sup>

Indeed, not a single memory card, packet of code, or voter-marked ballot from E2016 was included in whatever investigation DHS may have undertaken—at least not any that DHS was willing to acknowledge having examined. Which is like Deflategate without an air-pressure gauge or indeed the footballs! It strains credulity to think that corporate property rights trumped a *DHS* investigation of a possibly rigged election—making the hard evidence as off-limits to DHS (to the point that they knew better than to even try to obtain it) as it has always been to lesser lights trying to follow the trail of statistical disparities and anomalies. But then, much about the conduct of our elections strains credulity, so it is among the possibilities to be considered.

There is also the possibility that evidence of any such interference, especially if it had been found to have compromised the outcome of the election, would meet the fate of the sections of the Warren Commission Report that were sealed away until some future time when the matter would be of primarily historical interest.<sup>66</sup> Perhaps the DHS and related investigators really *did* decide not to even peek at any of the hard evidence of what happened in E2016’s cyberspace; perhaps it *began* to peek and didn’t like what it saw; perhaps it saw enough to sound the alarm but *chose* not to, wisely (perhaps) deciding to direct energies to protecting future elections without triggering a national crisis over what it had discovered about this one. The anathema of “undermining voter confidence” in our elections has long been the election rigger’s best moll.

## Catch-22

It is pretty clear where Election 2016 left America: angry, distrustful, horribly divided, and under the rule of a president without precedent and a locked-in Republican majority that, after a certain amount of hemming and hawing, decided rather predictably which side the bread was buttered on. The sprinkling of quasi-non-enablers—Senators Flake and Corker, the ailing John McCain, the odd state legislator—are exiting the fray and moving on. Within the executive branch itself, a host of career civil servants have resigned their

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<sup>65</sup> See Sam Thielman, “Were Voting Machines Actually Breached? DHS Would Rather Not Know,” at <https://talkingpointsmemo.com/muckraker/dhs-doesnt-want-to-know-about-vote-hacks>.

<sup>66</sup> See <https://www.usatoday.com/story/news/nation/2013/08/17/jfk-files-still-sealed/2668105/>.

offices, only to be replaced with litmus-tested Trump loyalists or not replaced at all, in keeping with the Trump revival of the Grover Norquist “drown the government in a bathtub” plan. An unprecedented number of high-level appointees have run afoul of the law, ethical standards, or their Boss’ moods, and either resigned or been fired. With a cabinet full of billionaires and corporatists, and with K Street more brazen than ever, “The Swamp” has yet to show a dry spot. It has been chaotic, kakistocratic, and, from the standpoint of most Americans, not worthy of even tepid approval.<sup>67</sup>

In the throes of this national fugue state, it is rather disorienting to look back at where the campaign year 2016 started. Bernie Sanders, the “other” populist and bringer of new things, was threatening single-handedly to rewrite the rules of campaign finance—and, indeed, *politics*—by raising an enormous war chest from small, individual contributions, without once stooping to drink at the corporate trough. He was speaking to voters not just in the coastal blue enclaves but across America’s heartland, drawing huge crowds, delivering a message that resonated with young and old and across class lines. He represented the first serious threat to corporate hegemony in decades. As such, he had to be stopped; and he *was* stopped, in a series of primaries so red-shifted that the exit polls had to be canceled entirely for the last several states. First things first.

When the primary and then general election dust had settled, Trump, Sanders’ far-right pseudo-populist counterpart, was installed—the unorthodox but somehow fitting capstone to the quest for right-wing hegemony. All this was built, year by year, on the succession of computerized elections that presented opportunity after opportunity to steer America away from a path the voters might otherwise have chosen. Without the hard evidence that even the DHS either could not access or had no stomach for, we cannot know whether the electoral outcomes of the computerized voting era are a chimera, a figment of manipulated bits and bytes. But the results and where they have brought us are real enough. The laws passed and repealed are real. So are the executive orders. Neil Gorsuch and lower court appointments and decisions are real. Policy and direction are real, actual, historical. History—from melting Arctic ice to murdered Florida schoolchildren—is being written in ink and does not

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<sup>67</sup> Trump, in spite of help from the Likely Voter Cutoff Model (see Study V, Chapter VII) and the boost given by outlier Rasmussen to polling aggregates, has polled at or below 40% approval throughout his presidency. Presidential approval has, in fact, been one of the least volatile measures of a very volatile time (see [https://projects.fivethirtyeight.com/trump-approval-ratings/?ex\\_cid=rrpromo](https://projects.fivethirtyeight.com/trump-approval-ratings/?ex_cid=rrpromo)).

permit re-dos. Or, as Trump supporters have taken to jeering when faced with protests, petitions, parades, and polls: “Elections matter!”

For election integrity advocates, the current reality presents a special challenge. On the one hand, the ranks of the concerned, the ranks of the alarmed, the ranks of the outraged, and the ranks of the committed have all swelled far beyond the small band of probers that gathered and analyzed data in the wake of the 2004 election. Not only were there hundreds, even thousands, of individuals crunching numbers and asking questions 12 years later in 2016, there were tens of millions of Sanders supporters, then Trump supporters, and finally Clinton (and, of course, Stein) supporters who, at various points and for various reasons, began to listen to and echo those questions—who were at least somewhere on the road to “getting it” about the need for a less concealed vote counting process.

They were even joined at times by a media that had previously been all but impervious to coverage of this elephant in the room (though it *remains* impervious to regarding numerical or statistical anomalies, no matter how egregious, as “evidence” of anything). Much of this shift is courtesy of “the Russians” and their alleged attempts to “meddle” in E2016 and, if our intelligence services are to be believed, their intentions to do so in E2018 and E2020 as well. What we couldn’t seem to begin to imagine a right-wing true-believer, mercenary, or gamer—say a Karl Rove or Roger Stone or Jeffrey Dean or Mike Connell or Bob or Todd Urosevich—doing or wanting to do, we seemed to be able to see Vladimir Putin doing or wanting to do to our electoral process. Whether this double standard derived from a deep-state plan to finger the Russians and gin up Cold War 2.0, or simply from a weird American-Exceptionalist blind spot to home-grown chicanery, it is not yet clear. But there can be no question that, as RussiaGate grew longer and longer legs, making noise about *potential* (though of course not actual) election theft became more and more acceptable in mixed company.

On the other hand, though, the prospects for a genuinely secure, public and observable vote counting system anytime soon remain slim to none. A dozen years ago I first cautioned about a crippling Catch-22 that would one day confront those seeking meaningful electoral reform. It stems from the fact that the adoption of any electoral reform that would presumably impact and rescue the existing electoral and political systems is dependent on the realities of those existing electoral and political systems.

Put bluntly: How is it possible to force reform upon a majority (even assuming there were full cooperation from the minority, which, of course, there is not) that had achieved that majority status, and ultimately hegemony, via the very system we would be urging them to replace with something “fairer?” For a majority that has, by whatever means, managed to achieve what it perceives as virtual electoral immunity—exemplified by a 99 percent-plus re-election rate with an 8 percent approval rating—it would seem that no amount of public pressure within the bounds of ordinary politics would suffice to move the needle, let alone the mountain. Without a credible threat at the ballot box—which itself would depend on a secure, accurate, honest electoral process—how can serious reform of that very process stand a chance?

This is not an abstract dilemma.

There has been no positive action whatsoever from Congress on the election integrity front in the 15-plus years since the Help America Vote Act brought us near-universal computerized counting in 2002.<sup>68</sup> Meanwhile, the Republican-majority Supreme Court has, with its twin *Citizens United*<sup>69</sup> and *McCutcheon*<sup>70</sup> decisions, opened the floodgates to unlimited dark money (i.e., undisclosed campaign contributions) in our elections; and, just for good measure, in *Shelby County v. Holder*,<sup>71</sup> gutted the key provision of the Voting Rights Act of 1965 that had been instrumental in holding back the new wave of voter suppression in the very states with a sordid history of Jim Crow disenfranchisement. And the recount debacle has demonstrated what prospects positive electoral reform will have at the state level, in the beet-red fiefdoms into which key swing states like Michigan, Wisconsin, and Ohio have been transformed.

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<sup>68</sup> The naïve might label as “positive action” by Congress the \$380 million appropriated—as part of the \$1.3 trillion 2018 omnibus spending bill—for election equipment upgrades and security. Aside from the woefully inadequate sum itself (a mere tenth of the funds initially allocated by HAVA to computerize in 2002 and equivalent to about *one day* of spending in Iraq and Afghanistan, or one-sixtieth of Trump’s Wall), the money comes with no actual security mandates or directions for use. Congress has, in effect, made available to the states a left-over spool of thread so that they can sew some pleats into the cybercurtain behind which our votes are counted.

<sup>69</sup> See <http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/for-decision-and-analysis>.

<sup>70</sup> See <http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/for-decision-and-analysis>.

<sup>71</sup> See <http://www.scotusblog.com/case-files/cases/shelby-county-v-holder/for-decision-and-analysis>.

The trend in virtually *all* the red states has been *backwards*: more “efficient” gerrymandering; more restrictions on voting (rationalized as the need to combat a paper tiger of individual “voter fraud”); less accessible polling places; diminished voting hours; longer voting lines; and less transparency (e.g., voter-marked ballots removed from public record status). It is no wonder that the Harvard-based Electoral Integrity Project in 2016 ranked American elections *last* among those of all Western democracies.<sup>72</sup>

The post-E2016 political “coup” in North Carolina, stripping the newly elected Democratic governor of powers and effectively seizing control of the state’s election administration,<sup>73</sup> served as fair warning about the greeting election integrity reformers might expect for their legislative initiatives. Researchers at the Electoral Integrity Project scored North Carolina 58/100 for its handling of the 2016 election,<sup>74</sup> in line with Florida, Cuba, Indonesia, and Sierra Leone. Meanwhile, its legislative redistricting plan—i.e., gerrymandering—scored 7/100, the worst not only in the United States, but in the world.<sup>75</sup>

### **The Odd Ray of Light?**

Lest it be objected that I have my telescope focused here on the dark side of the Moon, I am obliged to point to a few bright spots detected over the past year—a bit of pushback, as it were, in the midst of this rout. Courts in several states—including North Carolina, Wisconsin, and Pennsylvania—have found a few of the more egregious GOP-drawn gerrymanders to violate one or another standard (which, for lack of a more definitive bar, seem for the most part to come down to exercising good taste in disguising the quest to assure maximum partisan advantage), and the issue is on the docket of the Supreme Court. Courtesy of the blocking of the nomination of centrist Merrick Garland (one of Senate Majority Leader Mitch McConnell’s self-proclaimed “proudest moments”<sup>76</sup>) and the substitution of the far-right Neil Gorsuch, the High Court’s take on gerrymandering should come down to whether Justice

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<sup>72</sup> See <https://www.electoralintegrityproject.com/eip-blogs/2017/1/7/its-even-worse-than-the-news-about-north-carolina-american-elections-rank-last-among-all-western-democracies>.

<sup>73</sup> See [https://www.washingtonpost.com/blogs/plum-line/wp/2016/12/16/the-gop-coup-in-north-carolina-previews-what-were-going-to-see-everywhere/?utm\\_term=.2d928d34dc7a](https://www.washingtonpost.com/blogs/plum-line/wp/2016/12/16/the-gop-coup-in-north-carolina-previews-what-were-going-to-see-everywhere/?utm_term=.2d928d34dc7a).

<sup>74</sup> See <https://www.electoralintegrityproject.com/eip-blogs/2016/12/22/was-there-fraud-in-us-elections>.

<sup>75</sup> See [www.newsobserver.com/opinion/op-ed/article122593759.html](http://www.newsobserver.com/opinion/op-ed/article122593759.html).

<sup>76</sup> See [https://www.washingtonpost.com/news/powerpost/wp/2016/08/16/the-forgotten-nominee-merrick-garlands-fate-rests-on-forces-beyond-his-control/?utm\\_term=.a3387c2b0ea0](https://www.washingtonpost.com/news/powerpost/wp/2016/08/16/the-forgotten-nominee-merrick-garlands-fate-rests-on-forces-beyond-his-control/?utm_term=.a3387c2b0ea0); see also <https://www.snopes.com/mitch-mcconnell-one-of-my-proudest-moments/>.

Anthony Kennedy can be won over on this issue, his ugly *Citizens United-McCutcheon-Shelby* track record notwithstanding. Meanwhile, the Trumpification of the lower federal courts—including several circuits where the majorities currently protecting voters’ rights are razor thin and fragile—continues apace and will endure for a generation.

In another welcome, though not quite blinding, bright spot, Virginia moved in 2017 to scrap its paperless DREs and vote on computer-counted paper ballots. This action, taken by the state’s Election Commission ahead of the high-profile gubernatorial election in November 2017, was spurred by both the national spike in concern over hacking vulnerabilities and, more specifically, the demonstrations in the “Voting Machine Hacking Village” at the annual DefCon hackers’ convention in July, of just how vulnerable that particular equipment was. If nothing else, Virginia’s action, fully accomplished in the August-October timeframe, illustrates just how quickly significant election reform and equipment replacement *can* come when sufficiently motivated. Notably, however, the action did not require approval by Virginia’s Republican legislature—which, in 2014, had cut from the budget the funds requested by Democratic Governor Terry McAuliffe to upgrade the state’s antiquated equipment.

The story, as we tour the country, does not stray far from the expected plot line. In Georgia, the Republicans tried to sell as “reform” their plan to “upgrade” from DREs to BMDs (ballot-marking devices) that turn votes into barcodes read by Opscans—replacing one level of computerization with another one and leaving the voting process as impervious to verification and vulnerable to manipulation as ever. In Arizona, the Republican-led Senate launched a stealth attack on the state’s bipartisan districting commission, aiming to wrest away its powers and reclaim them for the legislative majority. In Pennsylvania, the Republican-led state legislature went beyond merely filing an appeal to the U.S. Supreme Court, also threatening the Pennsylvania Supreme Court justices—who had the temerity to throw out one of the most contorted (and cynically effective) legislative districting plans in the nation—with *impeachment*.<sup>77</sup> And so it goes: it would be hard to mistake this nation-spanning partisan fight-to-the-procedural-death for anything remotely high-minded.

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<sup>77</sup> See <https://www.courthousenews.com/experts-balk-at-judicial-impeachment-moves-in-pennsylvania/>.

Which is why the deck is stacked against anything beautiful and bipartisan finding its way out of Washington anytime soon. The Russians are said to be coming (again), so we may see a bill emerge that, in the interests of national security, buttons up our elections (somewhat) against the purported plots of Putin—and any other foreign states out there that might be inclined to emulate the Evil Empire and get in on the act. But that bill will do *virtually nothing* to protect our elections from insiders, bad actors with access to the programming process itself. Congress may go so “far” as to require that federal elections have some sort of durable paper record. But don’t look for any serious requirements to *audit* those records—certainly not for E2018 or E2020—or you will be seriously disappointed.<sup>78</sup> Nor should you expect any *serious* funding to be allocated. Recall that we could pay our National Federal Elections Hand-Count Brigade for a *generation* for less than we spent on Iraq and Afghanistan every two weeks. But we won’t. Such are the priorities of office-holders who have come to have little fear of voters and their supposed right of review.

### **The Elections of 2017**

For a “non-election” year, 2017 proved worthy of very serious attention from both election forensics analysts and election integrity advocates. Virtually every “special election”—and there were a good number of them—was watched intently as a thumbs up or down for Trump, as were the regularly scheduled off-off-year elections in November.

The year began with a string of Republican wins in special elections to fill legislative seats—all in Trump strongholds, so not particularly surprising, but giving early indication that no amount of presidential buffoonery or venality (as Trump was turning out to be at least as bad as anyone who did not vote for him had feared) could shake loose the allegiance of his “base.” These culminated in the late-May U.S. House victory of Montana Republican Greg Gianforte, who had been slapped with an election-eve assault charge for body-slaming a reporter whose questions had rubbed him the wrong way. There was a certain amount of speculation that Gianforte’s violence had even *helped* him with many voters, as it echoed in deed the stream of belligerence-in-word emanating from the president’s mouth and twitter account. It did not escape notice, however, that these proxy Trump victories were all by considerably

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<sup>78</sup> As mentioned in Chapter II, note 124, the two exceptions—the “Secure America’s Future Elections” (SAFE) Act, H.R. 1562, and the “Protect American Votes and Elections” Act, S. 3049—have no prospects for passage.

narrower margins than Trump’s own margins in these districts just a few months before.

### **Explain This Night in Georgia**

Then came the first Big One of 2017, the runoff for the special election to replace Rep. Tom Price (R-GA) of Georgia’s Sixth Congressional District (GA-6), who had been chosen for Trump’s cabinet as Secretary of Health and Human Services, with the challenge to get Obamacare repealed or be fired.<sup>79</sup> Of little pragmatic significance, given the unassailable Republican House majority, this election was nonetheless the focus of extraordinary attention and expenditure. More than any of the other 2017 special elections, GA-6 was seen as a proxy for approval or disapproval of the Trump presidency and as a clue to the Democratic prospects for retaking the U.S. House in 2018. Held in a district that had long been solid Republican but that had given Trump the barest 1.5 percent plurality in 2016, the GA-6 Special was also the subject of intense media focus.

The Democratic candidate, 30-year-old Jon Ossoff, a former Congressional staffer and first-time office-seeker, faced a crowded field of 17 other candidates in a preliminary contest held in April. Among them was Karen Handel, former Republican Secretary of State of Georgia, along with a host of less serious challengers. If no candidate polled 50 percent of the total vote, the two top finishers would meet in a June runoff. With the wave of Trump disapproval mounting ever higher, Ossoff was seen to be closing on the 50 percent mark going into the April 18 election. On Election Night, as the returns were coming in, Ossoff held steady at just over 50 percent until a supposed “glitch” in Fulton County (the three counties in the Atlanta suburbs that comprise GA-6 are Fulton, Cobb, and DeKalb) paused the returns for several hours. When reporting resumed, Ossoff’s total had dropped below 50 percent, where it remained through the final count. Ossoff finished at 48.12 percent; Handel finished second with just over 19 percent of the vote and went through to the June runoff against Ossoff.

A “glitch” out of central casting; the fact that all but the mailed-in and “provisional” ballots were cast and counted on DRE computers with no paper

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<sup>79</sup> Price, whose conflicts of interest had been subject to repeated inquiry during the course of his legislative career, was forced to resign in disgrace on Sept. 29, 2017, after racking up over \$400,000 in expenses for charter flights. This Trump-like behavior did not sit well with a president whose pledge to “drain the swamp” had already been exposed as a mockery.

record and no capacity for recount, audit, or verification; and the extraordinary security breaches uncovered at the Kennesaw State University Election Center,<sup>80</sup> the outfit entrusted with the programming of the computers and the management of voter databases: each of these factors raised red flags of suspicion about what was reported as a “disappointing” Democratic result, as Ossoff fell 1.9 percent short of the magic 50 percent number required for the outright win of the seat (and instant humiliation for Trump and the GOP that was trying to figure out whether to disown or embrace him).

The stage was then set for the June 20 runoff. The perceived proxy significance of this election was mirrored in the funds that poured in for both sides—more than \$50 million, an all-time record for a congressional seat.<sup>81</sup> The tracking polls averaged to a dead heat.<sup>82</sup> With the exception of a single poll conducted by Trafalgar (a polling firm identified in aggregate poll charts with an “R”<sup>83</sup>—that is, as working exclusively for Republican clients), however, Handel never held a lead in the polls in the six weeks going into the runoff election. Nonetheless, based on my own experience observing and handicapping U.S. elections in the computerized voting era, I publicly predicted<sup>84</sup> (speaking at a conference on June 2) with complete confidence that Ossoff would lose to Handel. Indeed I promised that it was such a lock that, should Ossoff win, I would cease all election integrity activities and concede that I was nothing more than a wild-eyed, tinfoil-hat “conspiracy theorist” after all. Fortunately for my career, Handel came through with flying colors and won by 3.7 percent, 52.87 percent to 48.13 percent.

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<sup>80</sup> See Kim Zetter, “Will the Georgia Special Election Get Hacked?” in *Politico*, at <https://www.politico.com/magazine/story/2017/06/14/will-the-georgia-special-election-get-hacked-215255>.

<sup>81</sup> See <https://www.politico.com/story/2017/05/06/georgia-special-election-spending-record-238054>.

<sup>82</sup> See [https://www.realclearpolitics.com/epolls/2017/house/ga/georgia\\_6th\\_district\\_runoff\\_election\\_handel\\_vs\\_ossoff-6202.html](https://www.realclearpolitics.com/epolls/2017/house/ga/georgia_6th_district_runoff_election_handel_vs_ossoff-6202.html). Note that all polls were conducted using the Likely Voter Cutoff Model (see Chapter VII, Study V) for sampling, a methodology that is recognized to disproportionately eliminate Democratic-leaning constituencies such as renters, students, and less-affluent voters from the sample, thereby advantaging Republican candidates in the poll results.

<sup>83</sup> See <https://drive.google.com/file/d/0B4lhKxf9pMitSUE2X2ItLWhoYVU/view>.

<sup>84</sup> See <https://www.youtube.com/watch?v=i9Ap1IjAsq0&feature=youtu.be>.

## Laughing Their #Ossoff

Presidential Counselor Kellyanne Conway (of “alternative facts” fame<sup>85</sup> and an unpunished serial Hatch Act violator<sup>86</sup>) summed up the reaction among leading Republicans when she tweeted “Laughing my #Ossoff.”<sup>87</sup> The Democrats, oh-for-five at that point in 2017 special elections and seemingly unable to win *anything* despite Trump’s lead-balloon unpopularity, started wailing about new strategies and new leadership. Ossoff’s defeat was another serving of the bounteous and bitter fruits respectively of apparent victory and apparent defeat, having profound effect upon political expectations and strategies, and indeed upon all aspects of political behavior, going forward.

Prior to the election, legal action to require that votes be cast on paper (and counted by optical scanner), to provide a durable record for verification purposes, failed when the judge ruled that it would be too burdensome on the state to print ballots for GA-6 and to use its existing optical scanners (which were already being used to count mail-in ballots) to count Election Day ballots.<sup>88</sup> As a result, only mail-in ballots and provisional ballots—approximately 10 percent of total votes—were cast on paper and in any way verifiable. The remaining 90 percent? For that we’d just have to trust Kennesaw State Election Center; its director, Merle King;<sup>89</sup> and their already-breached security protocols.

It is worthy of note that this was a *single-contest election* that *could* easily have been counted *observably, in public, by hand*, within two hours of poll closing, at minimal expense (though plenty of *volunteers* would have poured in). The Dutch, having taken one whiff of our 2016 elections, and aware of the security holes for computerized counting, had changed their protocol after two days of

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<sup>85</sup> See [https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/how-kellyanne-conway-ushered-in-the-era-of-alternative-facts/?utm\\_term=.c0431f5cb139](https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/how-kellyanne-conway-ushered-in-the-era-of-alternative-facts/?utm_term=.c0431f5cb139).

<sup>86</sup> See <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

<sup>87</sup> See <https://twitter.com/KellyannePolls/status/877355893905666048?ref>.

<sup>88</sup> See [http://www.slate.com/blogs/future\\_tense/2017/06/13/georgia\\_judge\\_throws\\_out\\_request\\_to\\_use\\_paper\\_ballots\\_in\\_the\\_upcoming\\_special.html](http://www.slate.com/blogs/future_tense/2017/06/13/georgia_judge_throws_out_request_to_use_paper_ballots_in_the_upcoming_special.html).

<sup>89</sup> See [https://www.washingtonpost.com/news/the-fix/wp/2016/08/31/theres-almost-no-chance-our-elections-can-get-hacked-by-the-russians-heres-why/?utm\\_term=.be124d0f7cec](https://www.washingtonpost.com/news/the-fix/wp/2016/08/31/theres-almost-no-chance-our-elections-can-get-hacked-by-the-russians-heres-why/?utm_term=.be124d0f7cec), which, while presenting the world of election integrity according to King, may additionally serve as an “Exhibit A” of credulous reporting.

consideration and counted their critical 2017 national election by hand,<sup>90</sup> joining a growing list of other advanced democracies.

### Verifiable vs. Unverifiable Counting: An Enormous Disparity

The Georgia Secretary of State Elections website helpfully breaks down vote totals by type of ballot cast.<sup>91</sup> There are four types of voting: Election Day in-person voting, Early in-person voting, Vote-By-Mail, and provisional ballots. The first two are cast and counted on DREs, which permit no meaningful verification, whether by audit or recount. Mail-in and provisional ballots, on the other hand, are cast on paper and counted on Opscans, the paper then being retained by federal law for 22 months—which would, at least in theory, permit verification processes to be undertaken, sharply raising the risk factor for manipulation of such votes.

The results for each type of voting are shown in the table below:

Results in GA-6 June 20 Runoff by Type of Voting/Counting			
Type of Voting	Handel %	Ossoff%	Ossoff Margin
Absentee By Mail (paper)	35.8%	64.2%	28.4%
Provisional (paper)	27.0%	73.0%	46.0%
Advance In Person (DRE)	49.3%	50.7%	1.4%
All Early Voting (Mail + In Person)	46.7%	53.3%	6.6%
<b>Election Day (DRE)</b>	<b>58.2%</b>	<b>41.8%</b>	<b>-16.4%</b>
<b>Total Vote</b>	<b>51.8%</b>	<b>48.2%</b>	<b>-3.6%</b>

Source: Georgia Elections website;

<http://results.enr.clarityelections.com/GA/70059/Web02-state/#/cid/30600>

We see that, after winning the verifiable Vote-By-Mail voting by a stunning 28.4 percent margin (and the provisional voting by an even more lop-sided margin of 46.0 percent), Ossoff also polled a narrow win in the unverifiable Advance-in-Person voting—only to be blown out by 16.4 percent in an unverifiable Election Day landslide. With the election already under a cloud of known security breaches at Kennesaw State, the larger cloud of known

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<sup>90</sup> See <https://www.theguardian.com/world/2017/feb/02/dutch-will-count-all-election-ballots-by-hand-to-thwart-cyber-hacking>. The right-wing candidate was soundly defeated.

<sup>91</sup> See <http://results.enr.clarityelections.com/GA/70059/Web02-state/#/cid/30600>.

vulnerability to hacking and rigging of unverifiable DREs, and the still larger cloud of more than 15 years of virtually unidirectional vote counting anomalies and red flags in the computerized voting era, this glaring disparity obviously warranted deeper investigation.

The first point to be made—and it is a familiar one—is that neither the Ossoff campaign nor the Democratic Party had any interest in pursuing such an investigation. And, not surprisingly, neither did *The New York Times*—to which we sent critical data, and with which we engaged in lengthy discussion—nor any other MSM outlets. To be clear, Handel’s landslide victory in Election Day voting was *absolutely shocking*. It was not remotely predicted by a single poll, not even the Republican-identified poll by Trafalgar referred to above, which was the *only* poll to show Handel ahead (by 2 percent). Even this outlier poll showed Handel with a mere 1.6 percent lead among likely voters yet to cast their votes a week before Election Day.<sup>92</sup> This begged two obvious questions: 1) Did anything happen to swing voters so strongly for Handel or against Ossoff? And 2) Did the huge Vote-By-Mail Ossoff margin simply reflect that Democratic voters in GA-6 are more prone than are Republican voters to cast mail-in ballots?

The answer to the first question is fairly clear: there was no gaffe or scandal in the week before Election Day. Ossoff did not get crushed in a debate, urinate in public on a statue of Robert E. Lee, or get caught in bed with a farm animal. Handel did not give a speech for the ages or pick up any critical late endorsement. The money and endorsements pouring in from both sides had already done their work—hardly anyone (a scant 3.88 percent of those planning to but yet to cast a vote, according to the Trafalgar poll) remained “undecided” and up for grabs.<sup>93</sup> The Ossoff get-out-the-vote operation, which helped Ossoff to his 6.6 percent overall lead in early voting, did not run out of money, and there was no shortage of volunteers.

The only incident of note was the “baseball practice” shooting in Virginia, in which a Republican congressman as well as several others were seriously wounded a week before the GA-6 election.<sup>94</sup> Although Republicans happened to be targeted by an obviously disturbed individual, the attack was also widely

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<sup>92</sup> See Trafalgar poll, at <https://drive.google.com/file/d/0B4lhKxf9pMitOkVYeExaaV9PczQ/view>.

<sup>93</sup> *Ibid*, p. 3.

<sup>94</sup> See <https://www.cnn.com/2017/06/14/politics/congressional-shooting-victims/index.html>.

seen as a symptom of a hyper-polarization and breakdown in norms of civility and decency in which Trump’s inflammatory rhetoric was regarded by many, including Republicans, to have played a key role.<sup>95</sup> There was a strong sense as well that, in that hostile “Age of Trump” environment, either side might be the target of such violence. And, of course, the usual fleeting concern about the easy availability of assault weapons, which skews Democratic. I also checked with several colleagues on the ground in GA-6, who responded that there was no sign that Election Day voting in GA-6 was swung sharply by either this incident or any other late-breaking news event.

The second question required a bit more digging. If it turned out that GA-6 Democrats had displayed a historical tendency to mail in their ballots, that would have sufficed to establish a benign explanation for the verifiable/unverifiable disparity. It was a simple enough exercise to download and organize the archived data for the past several GA-6 elections from the Georgia Elections website. As shown on the chart below, it is not Democrats but *Republicans* who consistently prefer to vote by mail in GA-6.

That is, until 2017. In the three preceding elections, from 2012 through 2016, the Republican candidate’s margin among Mail-In/OpSCAN voters exceeded his margin among DRE voters by an average of 11.1 percent. Suddenly—in the two Ossoff elections, preliminary and runoff—that pattern spun on its heels. Now the Republican candidate (Handel) couldn’t seem to *buy* a Mail-In/OpSCAN vote, *trailing* her DRE showings by 59.0 percent and 36.0 percent respectively. So it seemed that suddenly it was *Democrats* (or, more precisely, voters who selected the Democratic candidate<sup>96</sup>) who flocked to the mailbox to vote.

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<sup>95</sup> See <https://www.aol.com/article/news/2017/06/15/gop-rep-mark-sanford-trump-partially-blame-rhetoric-scalise-baseball-shooting/22305640/>.

<sup>96</sup> The distinction is significant. Analysts were able to obtain the voter registration data necessary to determine what portion of the Ossoff mail-in vote was cross-over by Republicans, a determination of great forensic significance. Using this data, in a drilldown too complex for presentation here, it was shown that no plausible benign scenario existed that could account for the radical disparity in voting patterns between votes cast and counted verifiably (i.e., on opscans) and unverifiably (i.e., on DREs). See <https://voterga.files.wordpress.com/2017/10/6th-district-runoff-statistical-analysis.pdf>.

## A Comparison of Vote-By-Mail Patterns For Voters in Georgia Sixth Congressional District 2012 - 2017

ELECTION YEAR	%Total Vote Margin (R win = +)	%DRE <sup>1</sup> Vote Margin	%OPSCAN <sup>2</sup> Vote Margin	%OPSCAN Vote Margin Minus %DRE Vote Margin <sup>3</sup>
2012	29.0%	28.1%	43.1%	15.0%
2014	32.0%	31.9%	38.4%	6.5%
2016	23.4%	22.7%	33.0%	10.3%
<b>2012 - 2016 Aggregate</b>	<b>28.1%</b>	<b>26.9%</b>	<b>38.0%</b>	<b>11.1%</b>
<b>2017 - Prelim<sup>4</sup></b>	<b>3.8%</b>	<b>5.8%</b>	<b>-53.2%</b>	<b>-59.0%</b>
<b>2017 - Runoff</b>	<b>3.8%</b>	<b>7.6%</b>	<b>-28.4%</b>	<b>-36.0%</b>

1. DRE voting includes at-poll and early in-person voting.
2. OPSCAN voting includes only Vote-By-Mail voting.
3. A positive (+) percentage in this column indicates Republican performed better in OPSCAN vote than in DRE vote; i.e., Republican voters were more likely than Democratic voters to use Vote-By-Mail to cast their votes.
4. In 2017 Preliminary contest, D = Ossoff, R = All other candidates (12 R, 4D); Ossoff <50% = Runoff.

Or did they? What if the Ossoff mail-in vote advantage reflected not simply a flood of Democratic voters suddenly breaking with habit and deciding to vote by mail,<sup>97</sup> but instead the verifiability of those paper ballots and their consequent relative resistance to risk-free manipulation? What if the mail-in votes as cast were not so wildly divergent from the in-person votes as cast? What if, instead, the unverifiable in-person votes were manipulated, *when they needed to be*, with a big Ossoff lead to overcome on Election Day? What if one of the numerous known security breaches was exploited to alter the result of the election?

<sup>97</sup> Some were led to speculate that the surge of Democratic mail-ins in the June runoff might perhaps have been prompted in part by the Ossoff campaign's encouraging of vote-by-mail as a protection against DRE-based fraud. Having combed the campaign literature for that specific message, what we found was that the *Handel* campaign inserted vote-by-mail applications into at least one of its mailings, while the Ossoff campaign did not. Such "benign" explanations, where remotely plausible, certainly warrant serious investigation. *But so do the hardware and software that recorded and counted 90 percent of the GA-6 vote in invisible strings of 1s and 0s.*

If these questions seem far-fetched, we owe it to ourselves (and to democracy) to ask the “opposite” question: What proof exists that the 90 percent of the vote count conducted on unverifiable and manifestly vulnerable DREs was *not* hacked or maliciously programmed, altered in the pitch-dark of cyberspace?

We might ask Kennesaw State Election Center Director Merle King or Georgia Secretary of State Brian Kemp for that proof, since it was in their possession and easy enough to furnish. And indeed legal action was pursued,<sup>98</sup> in which the server used by the state to tally the votes in the Handel-Ossoff contest—which held the programming for both the April 18 (preliminary) and June 20 (runoff) special elections—was sought in evidence. But—far from providing the sought-after proof—*four days after the filing of that suit*, officials at the Kennesaw State Center for Election Systems destroyed the key piece of hard evidence by completely erasing the server.<sup>99</sup> Ooops.

As justification, it was pointed out that the FBI had been given a copy of the server—but of course it was an *old* copy, given to the FBI in March 2017, prior to the programming of Handel-Ossoff. Then two other backup copies—the only ones known to exist with Handel-Ossoff programming—were located by Kennesaw State Center for Election Systems. For good measure, they were scrubbed by the Center on August 9—using a process called “degaussing” that magnetically and permanently destroys all data—the day after the suit was moved to federal court, according to the Georgia attorney general’s office.<sup>100</sup>

Even viewed in isolation, such blatant and brazen destruction of evidence fairly screams coverup. When viewed in the context of the election integrity movement’s 15-year no-hitter when it comes to access to the hard evidence,

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<sup>98</sup> See [http://bradblog.com/Docs/CURLINGvKEMP\(2\)-ComplaintWithVerificationAndExhibits\\_070317.pdf](http://bradblog.com/Docs/CURLINGvKEMP(2)-ComplaintWithVerificationAndExhibits_070317.pdf).

<sup>99</sup> See <https://www.nbcnews.com/politics/news/georgia-election-server-wiped-after-lawsuit-filed-n814581>. The scrubbing of the server occurred on July 7, 2017.

<sup>100</sup> For a full narrative of these maneuvers, see “Georgia Elections Data Destruction Audit,” at <https://voterga.files.wordpress.com/2018/04/georgia-elections-data-destruction-audit.pdf>. The “oops” defense was also on display in infamous Broward County, Florida, where the paper ballots from the August 2016 Democratic primary—in which challenger Tim Canova took on former DNC Chairwoman Debbie Wasserman Schultz for her U.S. House seat—were “inadvertently” destroyed while the subject of a public-records legal proceeding. The Florida Circuit Court recently ruled in plaintiff Canova’s favor (see <http://www.hollerbackfilm.com/blog/canovawinscase>) but, alas, the award of damages and attorney’s fees won’t bring back the ballots. Like the telltale data on the Georgia servers (and like the ballots from 58 Ohio counties in 2004, destroyed while under a standing federal court order), they are gone for good.

living witnesses, or “smoking guns” that are demanded as the ante to even begin a discussion, it screams ten times louder.<sup>101</sup>

### **Did the Worm Turn? Implication of Democratic Victories**

I have taken pains at various junctures throughout this book and my other writings to point out that Democratic victories do not equate with secure elections processes. Obviously, even with the means in hand to win every election, that would be a foolish strategy to pursue, as it would quickly tip off opponents and observers alike that the game was rigged. No one will play with a hustler who sinks every shot or wins every hand. Also obviously, reversing the outcomes of expected routs and blowouts is a good way to arouse suspicion and trigger investigation: the all-important reward/risk ratio plummets when such risk skyrockets. It is in close contests with some measure of national significance that the calculations become subtler: there are multiple factors at play—including access, scrutiny, win-value, and long-view strategic considerations—and it becomes more difficult to channel the rigger’s algorithm to a clear “green/go” or “red/stop” signal.

There is no question that Democratic candidates have, since the Ossoff loss, experienced a fair amount of success, both in the scattering of special elections and in the November 2017 off-off-year general. Leaving aside, for the moment, Doug Jones’ victory over Roy Moore for U.S. Senate in Alabama, let’s examine the factors at play in the rest of the post-Ossoff contests.

The first thing to note about these contests is that, taken together, they did not constitute a big enough “pot” to alter the national balance of power.

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<sup>101</sup> Before leaving GA-6, I wish to cite it as a recent example of what I have called “electoral resonance”—the impact of elections *beyond* their determination of who is to occupy a given office. Handel-Ossoff—that is, Handel’s victory and Ossoff’s defeat—has already found its way into quite a few narratives of the zeitgeist and various trends of the Age of Trump, often quite far afield from mere political handicapping.

One example I came upon recently was a *Times* review by Katha Pollitt of a new book by Cecile Richards, the outgoing president of Planned Parenthood (at <https://www.nytimes.com/2018/04/25/books/review/cecile-richards-make-trouble.html?ref>). In her review at one point, Pollitt—referring to the 2012 fiasco in which the Susan G. Komen Foundation pulled its funding from Planned Parenthood, only to abruptly reverse course amidst a firestorm of protest—takes Richards gently to task for an omission: “But she [Richards] doesn’t say that the woman behind Komen’s ill-fated plan, Karen Handler (sic), defeated Jon Ossoff in a much-publicized Georgia congressional race.” The “fact” of Handel’s victory takes its place in support of Pollitt’s larger query: “I would have liked to read why [Richards] thinks the enemies of reproductive rights have been so [politically] successful.” That’s a question I would have been happy to take a forensic crack at.

Democrats could have run the table—won, quite literally, every one of these contests—and still be looking at GOP control of the Senate, House, and a large majority of statehouses. So, in a sense, these elections had national significance only as proxies for approval/disapproval of Trump and tea leaves for November 2018. However—unlike the Handel-Ossoff race, which was agreed upon by both sides as the site for a pitched battle—none of these contests spurred record-breaking investments by pro- and anti-Trump forces. Only Election Day 2017 itself—with the governorships of Virginia and New Jersey on the ballot—and perhaps the March 2018 U.S. House race in PA-18, approached the GA-6 election in terms of attention paid and meaning ascribed to the results.

The two major statewide races in the November election took place in Virginia and New Jersey, and Democrats were victorious. The New Jersey contest, where despised departing Governor Chris Christie was a drag on Republican candidate Kim Guadagno, was not close: the margin was a rig-proof 13.4 percent. In Virginia—where the Republican Ed Gillespie, a former RNC chairman, was hamstrung between Trump and the GOP establishment—the margin was 8.88 percent, borderline rig-proof. To put it in perspective, Democrat Ralph Northrup won by a margin of 231,725 votes, which is just about three times the total *combined* margin (77,744) of Trump’s victories in Wisconsin, Michigan, and Pennsylvania—the states that delivered him the Electoral College and the presidency. Flipping a net of over 115,000 votes in a single state—a state, moreover, under a Democratic administration that had, as we have noted, got religion and ditched its DREs, so that its 2017 election was, in theory at least, verifiable—would have been a tall order, especially considering the rather modest prize at stake. The reward/risk ratio for such contests is well below any rational “Go” line.

Nonetheless, I found myself fielding a small barrage of calls and emails essentially asking whether I thought the Democratic victories in Virginia, New Jersey, and a few other states “proved” that U.S. elections were suddenly “secure.” A few went so far as to ask whether, all archived evidence notwithstanding, E2017 proved that U.S. elections had *always been* secure. So, if you will bear with me as we take one last trip around this familiar block, this was and is my response to that question:

There are very good reasons that entities with the capacity to interfere with the counting process would have taken a pass in these contests, as it appears they did:

- 1) The actual victory margins in key contests were large—altering *outcomes* would have brought the “smell test” powerfully into play. Even in the Beacon of Democracy, where election theft is a “conspiracy theory” ranking somewhere between 9/11 Truth and alien abduction, there is a limit to how strange and shocking results can be without provoking suspicion and investigation. Reversing a 5 percent margin of victory would probably pass the smell test; a 10 to 15 percent margin would pose an unacceptable risk.
- 2) The election manipulator’s basic operational algorithm is a simple one: maximize victories and minimize losses, within bounds of acceptable levels of risk of detection. This calculus is, however, tempered by long-range strategic considerations. The 2017 prizes, significant as they may have seemed, were a *droplet in the bucket* compared to what is on the table in 2018. Given the now-heightened scrutiny of our election processes (and of course concerns about “the Russians”), it would have made little strategic sense to have triggered any red flags in November 2017—thereby putting more urgency into the effort to button-up election security before 2018. Indeed, it would have been a gross strategic blunder.
- 3) Virginia had decertified its paperless machines (DREs),<sup>102</sup> so that, unlike in the high-profile U.S. House election in GA-6 that summer, voting was entirely on paper and recounts/audits would have been in play in the event of “issues” with the count (anomalous results, exit poll/votecount disparities, etc.). In fact, three state legislative elections *were recounted*,<sup>103</sup> with control of the Virginia House of Delegates in the balance. Crucially, election administration at the state level was—unlike in the key swing states in E2016—under Democratic control.
- 4) New Jersey, although using non-verifiable DREs, was, as noted above, simply too big a margin—a win by Republican gubernatorial candidate Kim Guadagno would have failed the smell test spectacularly. The

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<sup>102</sup> See [https://www.washingtonpost.com/local/virginia-politics/virginia-scrap-touch-screen-voting-machines-as-election-for-governor-looms/2017/09/08/e266ead6-94fe-11e7-89fa-bb822a46da5b\\_story.html?utm\\_term=.b64e40b25979](https://www.washingtonpost.com/local/virginia-politics/virginia-scrap-touch-screen-voting-machines-as-election-for-governor-looms/2017/09/08/e266ead6-94fe-11e7-89fa-bb822a46da5b_story.html?utm_term=.b64e40b25979).

<sup>103</sup> See <https://wtop.com/virginia/2017/11/as-va-heads-recounts-dems-ask-hundreds-wrong-ballots-fredericksburg/>. Control of the Virginia House, after an unfavorable court ruling, came down to a coin flip—which the Democrats, shockingly, lost.

same can be said for the landslide vote in Maine approving the expansion of Medicaid.<sup>104</sup>

What about the handful of competitive down-ballot contests—both on November 7, 2017, and scattered throughout the 2017-18 calendar as special elections—that arguably carried a sliver of national significance: an attorney general here, a state legislative majority there? And what about the heavily scrutinized Lamb-Saccaro U.S. House race in PA-18?

Put yourself in the shoes of a national-grade, election-manipulating political operative (or foreign state) and ask yourself whether *any* of these were the time to pull your trick shot or a sleeved ace? Such Democratic victories—at no pragmatic political power-balance cost—besides bolstering the illusion of pendulum-swing and electoral “normality,” serve as a fundraising wake-up call for overconfident and complacent Republican donors going into E2018, a major *plus*. If you win every hand, either no one will play with you or they will start making you play in short sleeves. You save those up-sleeve aces for the big pots. Elections 2018 and 2020, both with national control front-and-center on the ballot, are the big pots—they are, given the fracturing of the country, for all the marbles.

But—as we’ve seen, and such fundamental logic notwithstanding—there’s a great urge to say “There! You see, it’s all good now!” When Democrats win—whether it’s Obama in 2008 and 2012 (the rig-defying mechanisms for which are explained in previous chapters) or Ralph Northrup in 2017 or Conor Lamb in 2018—the reflex takeaway is that it proves U.S. elections are safe and secure.

*This is, upon reflection, because virtually every piece of damning forensic evidence collected over the 16 years of the computerized vote-counting era points to distortions or manipulations favoring the more right-wing candidate or position.*<sup>105</sup> If some champion of the Right is so good at rigging, goes the thinking, and if elections could still *be* rigged, why would he/she/it *ever*, in a competitive election, allow the Democrat or left-winger to win? *Ipsa facto*, the Election 2017 results prove rigging is not possible—so the thinking goes.

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<sup>104</sup> See [https://www.washingtonpost.com/news/the-fix/wp/2017/11/07/maine-could-become-the-first-state-to-expand-medicare-by-ballot-initiative/?utm\\_term=.f8c71a2b3ab3](https://www.washingtonpost.com/news/the-fix/wp/2017/11/07/maine-could-become-the-first-state-to-expand-medicare-by-ballot-initiative/?utm_term=.f8c71a2b3ab3).

<sup>105</sup> See <https://harpers.org/archive/2012/11/how-to-rig-an-election/7/>.

With the reward/risk ratio being so dreadful, rigging E2017 would have been, strategically speaking, *idiotic*. But it is necessary to spell this out repeatedly, so strong is the desire to seize upon any apparent evidence that things are on the up and up.

### **What Democracy *Could* Look Like**

To me, ironically, the takeaway from November 2017 is that *this is just what elections in an observably counted United States would look like*.

Yes, the elections took place mostly in Blue-ish America, but what was notable about the Democratic victories was that: 1) They significantly *exceeded* margins predicted by tracking polls; and 2) Where conducted, the unadjusted NEP exit polls<sup>106</sup> were *spot-on*. These two indicators, for the reasons that follow, are just what we would expect to find in an honestly counted (i.e., non-rigged) election.

Throughout the era of computerized vote counting, as we have seen in many examples throughout this book, unadjusted exit polls in competitive elections of national significance have exhibited a pervasive, unidirectional error. The exit-poll/votecount disparity has been so pervasive and so unidirectional that we came to call it the red shift—the candidate or proposition to the right performs better in votecounts than in exit polls. And, as we demonstrated in our analysis of E2006, among other elections, this phenomenon is not attributable to a left-skewed sample.<sup>107</sup>

On November 7, 2017, for the first time in the computerized voting era, the red shift *vanished*. The exit polls were—*mirabile dictu*—*accurate*.

Instead we saw—especially in the paper-ballot state of Virginia—a "blue shift" from most of the tracking polls (that is, the candidate to the *left* does better in the election than predicted by the polls). This too was essentially unprecedented in the computerized voting era in competitive elections of national significance.

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<sup>106</sup> For a discussion of the adjustment process and the value and significance of the unadjusted polls, see [https://www.opednews.com/articles/U-S-2016-Unadjusted-Exit-by-Ron-Baiman-2016-Elections\\_Exit-Polls-161208-153.html](https://www.opednews.com/articles/U-S-2016-Unadjusted-Exit-by-Ron-Baiman-2016-Elections_Exit-Polls-161208-153.html).

<sup>107</sup> See also, "Landslide Denied," Study II in Chapter VII.

Why would we expect to see that phenomenon in an *honestly* counted election? Because polling and elections constitute a classic feedback loop.<sup>108</sup> As the computerized voting era unfolded, pollsters began to see their predictions going wrong—consistently predicting results to the left of electoral outcomes.<sup>109</sup> They of course assumed that this was because something was “wrong” with their polls, most likely their sampling methodology—even though it had been working fine for pre-computerized voting and a rational analysis would at least have considered the change in *vote-counting* methodology among the causes for the polls’ sudden struggles. Instead, the pollsters tweaked their polls. The response by the pollsters—initially from Gallup, but it “worked” so well that it was adopted by the field—was to develop a sampling methodology known as the Likely Voter Cutoff Model (LVCM).<sup>110</sup>

The LVCM operates to disproportionately exclude from polling samples voters from traditional Democratic constituencies (young, low-income, transient/renters/mobile, elderly, marginal). It employs a series of screening questions (e.g., “How long have you lived at your current residence?”) designed to “qualify” only the more stable/core/consistent voters—i.e., disproportionately Republicans—as respondents.

That this skewed sampling model “worked” so well was one strong, albeit indirect, piece of evidence that the votecounts it was attempting to mirror had themselves been corrupted. In an *honestly* counted election, the LVCM would fail, predicting results to the right of the votecounts—and that is exactly what we saw in Election 2017.

### **And Alabama?**

The December 2017 Special Election in Alabama to fill the U.S. Senate seat vacated by Attorney General Jeff Sessions was easy to misread, as it inverted pretty much all conventional political calculus. Given the GOP’s slender, two-seat Senate majority, the election was significant yet not of critical importance. Even had there been concern among the GOP leadership that a Democratic victory coupled with two GOP defections would sink the all-important “tax reform” bill, Senate Majority Leader Mitch McConnell knew that he was under

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<sup>108</sup> See <http://www.truth-out.org/news/item/27203-vote-counts-and-polls-an-insidious-feedback-loop>.

<sup>109</sup> It is worth reiterating that there is a natural overlap between electoral contests competitive and significant enough to be targets for polling and electoral contests competitive and significant enough to be targets for rigging.

<sup>110</sup> See Study V in Chapter VII.

no obligation to seat the Democrat in place of temporary GOP Senator Luther Strange until after the tax war was won.

The Republican candidate was Judge Roy Moore, who had defeated Strange in the GOP primary. As if his record and antics—he had twice been removed from the bench for violation of judicial ethics in putting his religious views above the rule of law<sup>111</sup>—were not controversial enough, Moore found himself in the crosshairs of the nascent #MeToo movement when he was accused by multiple women of predatory behavior toward them when they had been teenage girls and he a prosecutor in his 30s. As far back in the rear-view mirror as that may have been, in the emerging national reckoning with the phenomenon of male sexual predation, the roiling scandal transformed what would otherwise likely have been a comfortable Moore win into an exceedingly tight race.

It also put Senate Republicans—and, above all, McConnell—in a very uncomfortable position; so much so that there was serious talk of refusing to seat Moore in the event he won the election, a move that of course would have enraged the Trump base.<sup>112</sup> Even Trump (who was hardly in a position to come down hard on Moore on moral grounds) and the RNC found themselves in a pickle, fancy dancing and keeping their distance from the toxic candidate before finally going all-in with a hearty “we need him for the taxes” (even though they didn’t) endorsement a week before the election. To round out the *dramatis personae* for this passion play—and to shed some light on the outcome—we must give full screen-credit to none other than Steve Bannon and Karl Rove.

To describe Bannon and Rove as rivals would not begin to do justice to the antipathy the elder operative, once feted as “Bush’s brain,” harbored for the brash upstart who had displaced him at the right hand of the Right. Bannon had fallen from his White House perch in August but continued to have at least a piece of Trump’s ear and to be marshaling his ongoing disruption campaign from his position at the head of *Breitbart News*. Rove, who had slid off the radar with Trump’s rise, nonetheless maintained his reputation and value with the Republican establishment, from the Bushes to McConnell.

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<sup>111</sup> See <https://www.nytimes.com/2017/11/18/us/roy-moore-alabama.html>.

<sup>112</sup> *Seating* Moore, on the other hand, would have hung an 800-lb albatross around the GOP’s neck heading into E2018, especially after the Democrats cleared their tactical decks by cashiering #MeToo-targeted Minnesota Senator Al Franken.

Bannon went all-in and then some on Roy Moore, defending him against all manner of attack and promoting his candidacy with great zeal. Moore was—it was clear to all—*Bannon’s guy*. He thus presented a golden opportunity to put a stake through Bannon’s political heart. So both Rove—Bannon’s mortal enemy—and McConnell (and the GOP establishment more generally) had everything to gain from Moore’s defeat. This completely reversed the rooting sections and the dynamics for what many erroneously regarded as yet another Trump-proxy contest.

Thus, while many electoral integrity advocates approached the Moore-Jones election with concerns about meddling on Moore’s behalf,<sup>113</sup> I refused to dismiss the possibility of just the opposite. It certainly appeared that the forces that had produced 15 years of red shift might now find it in their hearts (and their interests) to produce a blue one.

As with virtually every American election, there is not much to go on in assessing whether a vote-count has been accurate and honest. We had no access to the voter-marked ballots; we had no digital ballot images, as these were all destroyed (see note 113). We did have exit polls, and indeed there was

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<sup>113</sup> As has more and more often been the case, this election was the subject of procedural challenge and wrangling—in this case a pre-election legal attempt to compel the preservation of digital ballot images, which are records of each ballot created by the ballot scanners used to tabulate the votes. This feature of most late-model scanners—including the ES-200 scanners used in Alabama—involves simply turning a switch to either “On,” which preserves the images, or “Off,” which destroys them.

On December 11, the day prior to the election, an Alabama circuit judge issued an order that the feature be turned on (see <http://thehill.com/homenews/campaign/364385-judge-orders-alabama-to-preserve-voting-records-for-senate-special-election>). The state made an emergency appeal to the Alabama Supreme Court, which stayed the order, and thereby essentially reversed the lower court, within minutes of the state’s filing, early in the morning of December 12, Election Day (see <https://techcrunch.com/2017/12/12/alabama-digital-records-vote-roy-moore/>).

Given that the “burden” on election administrators amounted to the flipping of a switch, it is reasonable to draw the inference that *somebody* well-placed did not want the ballot images to be preserved and possibly made available for verification purposes.

a “blue shift” of 2.7 percent.<sup>114</sup> And we did screencapture the rolling vote totals.<sup>115</sup>

We noticed an interesting development shortly after 10 p.m.: at 10:10 p.m., with 1897 out of 2220 precincts reporting, Moore is leading by 7,039 votes; at 10:13 p.m., *still with 1897 precincts reporting*, Moore’s lead has been reduced to 133 votes. That is, *without any record of additional precincts reporting*, 11,911 votes were added to Jones’ total, while Moore added 5,005 votes, thereby effectively wiping out Moore’s 7,000+ vote lead.

December 12, 2017 - 10:07PM ET				
Alabama - 1879 of 2220 Precincts Reporting - 85%				
Name	Party	Votes	Vote %	
Moore, Roy	GOP	511,562	49%	
Jones, Doug	Dem	506,894	49%	
Total Write-Ins	NPD	15,817	2%	

December 12, 2017 - 10:10PM ET				
Alabama - 1897 of 2220 Precincts Reporting - 85%				
Name	Party	Votes	Vote %	
Moore, Roy	GOP	522,226	50%	
Jones, Doug	Dem	515,187	49%	
Total Write-Ins	NPD	16,422	2%	

December 12, 2017 - 10:13PM ET				
Alabama - 1897 of 2220 Precincts Reporting - 85%				
Name	Party	Votes	Vote %	
Moore, Roy	GOP	527,231	49%	
Jones, Doug	Dem	527,098	49%	
Total Write-Ins	NPD	16,760	2%	

It is possible, of course, that the precinct numbers were simply erroneous, a mistake somewhere in the pipeline; though if we accept that to be the case, it is not entirely confidence-inspiring when it comes to the *rest* of the numbers—including, of course, the vote totals.

<sup>114</sup> One must ask, if the mantral knock on exit polls is that they “always over-represent the Democratic vote,” why *here*—in a contest where for once the lay of the land was such that there were powerful reasons for the *Republican* candidate to be marked for defeat by the *same operatives* who have consistently labored to bring about *Republican victories*—would *those same exit polls* suddenly depart from that etched-in-stone pattern and now instead over-represent the *Republican* vote? Put another way, the direction of the exit poll-votecount disparity appears to be strongly, if not perfectly, correlated with the motive, examined rationally, of right-wing operatives.

<sup>115</sup> The screencaptures were taken from the quasi-official reporting site [http://www.al.com/news/index.ssf/page/2017\\_alabama\\_us\\_senate\\_election\\_results.html](http://www.al.com/news/index.ssf/page/2017_alabama_us_senate_election_results.html).

But there are two other possibilities to consider. One is that a pile of absentee or mail-in ballots, not associated with a particular precinct, was added to the count somewhere between 10:10 and 10:13; this of course raises the specter of batches of ballots floating around or suddenly produced and fed into a central tabulator at the proverbial 11<sup>th</sup> hour, with no way of tracing them back to precinct-level results and no controls for their authenticity.

The other is electronic fraud—a program or hack that alters running vote totals in real time, in this case carelessly ignoring the “precincts reporting” counter.

We don’t know and, in all likelihood, we won’t know. Precinct-level drilldowns have detected some highly anomalous, indeed unprecedented, voting patterns in this election. And the late-shift catch-up-and-pass pattern—specifically featuring the “mystery votes” anomaly here noted—is a fingerprint we’ve seen before, as early as 2004 for Bush in Ohio.<sup>116</sup> That was a fingerprint associated with the mysterious breakdown and shutdown of the official Ohio state tabulators (under control of Republican Secretary of State and honorary Bush campaign chairman J. Kenneth Blackwell) and the porting of the votes to Mike Connell’s conveniently-in-place SmarTech “backup” servers in Tennessee—the late Mike Connell, who was known, then and at the time of his untimely death, as Karl Rove’s “IT guru.” It is curious and perhaps telling to find a clue so similar in the Moore-Jones election 13 years later. That it should accrue to the immediate benefit of a Democrat should not blind us to what, given the peculiar circumstances of this election, appears to be a consistency of both motive and *modus operandi*.

### **What to Expect in E2018**

It is no secret that the political survival of Donald Trump and his presidency is on the line this November. Democratic control of either chamber of Congress, though it would not guarantee impeachment, would almost certainly result in intensified investigation of the many dark corners from which congressional Republicans have been averting their eyes. It would also effectively block any further rightward legislating, strongly challenge executive fiats, and at least slow down the packing of the federal courts (which is why there has been such a precedent-breaking push to nix long-standing Senate protocols so as to expedite the confirmation of right-wing judges before the election).

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<sup>116</sup> And as recently as the April 2017 GA-6 Special Election, in which Democrat Jon Ossoff dropped below the crucial 50% (no runoff) level for the first time, and permanently, after the Fulton County servers were interrupted in their count by a two-hour breakdown.

E2018 is indeed the nation’s first collective opportunity to weigh in on the Age of Trump and the direction he has taken America. The gauntlet has certainly been thrown down, and thrown down hard: there is nothing ambiguous about it, this election *matters*. Historically, on average, the sitting president’s party can expect to lose a net of 25 House and two Senate seats in the first midterm election. When the president’s approval rating is below 50 percent, however, those numbers shoot up to 41 House and five Senate seats<sup>117</sup>—well beyond what is needed to shift party control in both chambers.

Two major caveats apply. The historical averages reach back before E2010 (“the gift that keeps on giving”), in the wake of which Republican precision gerrymandering is considered to have stacked the deck against what might otherwise be a “Blue Wave” sweep in the House, while in the Senate the Democrats are defending three seats for each Republican-held seat, including seven “battleground” races to three for the Republicans.<sup>118</sup> Then of course there is the inherent unpredictability of politics itself, at its very highest in this careening, reality-TV political moment. Extraordinary events—from military crises and nuclear brinksmanship to Nobel prizes to scandals and indictments—are in the air, and the impact of one or more such bombshells, positive or negative, cannot be discounted. Although Trump famously claimed that he could shoot someone on Fifth Avenue and not lose any voters (a boast that events have proven to be not far off the mark), it is not clear to what extent his capacity to hyperpolarize is a two-way street—whether, that is, he could win the Nobel Prize, and be knighted for good measure, and not *gain* any voters.

Based on the current lay of the land, and absent something wildly needle-moving, however, E2018 looms as a major corrective to E2016 and a great political risk for a Republican Party that has bound itself tightly to a hyperpolarizing and still grossly unpopular president. In an era of public, observable vote counting, we would therefore expect to see Democratic control of at least one chamber in 2019.

In the computerized vote counting era, however, if things hold true to form, we can look forward to the opposite. If Alabama can be taken as an indication, the thumbs will be on the scale for the greater good of the Republican

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<sup>117</sup> See <https://www.thoughtco.com/historical-midterm-election-results-4087704>.

<sup>118</sup> See [https://ballotpedia.org/United\\_States\\_Senate](https://ballotpedia.org/United_States_Senate).

establishment, which means the maintenance of control of Congress and the survival of the Trump presidency. We can expect therefore, to see, in November-competitive states and districts, the primary victories of the most “electable” GOP candidates (no Roy Moores, no white supremacists, no Don Blankenships). And in November—again, assuming no Nobels or indictments—a “surprisingly” but not “inexplicably” good night for Republicans, with both chambers still in GOP control when the dust finally settles. If past is prologue, there is too much at stake to play it straight in E2018.

### **Things as They Are**

I have found no solid ground for optimism that either the legislative or the judicial process will step up with the urgency and bravery required to steer our electoral ship off the shoals where it is foundering in time for our critical upcoming elections in 2018 and 2020. Some have attributed my depiction of this whole situation to cynicism. Aside from the fact that it would be tough to be a card-carrying cynic and continue for 15-odd years quixotically to advocate for election integrity in America, there is a world of difference between cynicism and a realistic appraisal of the cynicism of others.

There is nothing in my observation and understanding of human nature, modern American politics, or the specific behavior of those now in control of the federal and key state governments that leads to any real hope at all of imminent legislative reform to a secure, accountable, and above all observable, vote counting process for America. An encryption algorithm here, a machine audit, paper trail or ballot-marking device there: these *a la carte* tweaks, and accompanying lip-service, should not be confused with meaningful reform to an observable process that warrants public trust.

Our electoral process was *designed* to be concealed. That concealment is fortified with a host of ancillary provisions designed to impede and ultimately thwart efforts, like the 2016 “recounts” or the post-election challenge in GA-6, to un-conceal it—and the office-holders (of either party) it has elected have no compelling incentive to change that.

They are very unlikely to be moved by ringing appeals to “fairness” or “democracy,” by letters or petitions or protests. As for “lobbying”—or, we might say, *buying* a little electoral integrity—well the EI forces have yet to tap into quite the cash reserves of Big Oil, Big Pharma, or Big Finance.

As I argue in proposing action steps in the next chapter, it is critical that we take stock of things as they are, not as we would wish them to be, so that we can begin to plan, organize, and do what needs to be done.

## THE WAY FORWARD

*Those who make peaceful revolution impossible make violent revolution inevitable.*

-- John F. Kennedy

I guess by now you've seen enough—more than enough, I hope—to be saying something like, “My God, this is serious. What can we, what can I, do about it?” The answer is, a lot. Let's begin with what we are, and what we're not, asking for.

You'd have to search long and hard to find a subject more important and less sexy than election forensics. Dependent as it is on charts full of numbers, indirect measurements, statistics, probabilities, baselines, margins of error, and meta-analyses, even our best work has serious eye-glazing potential. And yet the reality is that only in the immediate forensic aftermath of shocking elections does election integrity seem to *come alive*, hit home, and become a focal interest to more than a handful of full-time advocates. The rest of the time, after the shockwaves and suspicious odors have dissipated, our vital subject customarily recedes into obscurity and seeming irrelevance. Separated from the drama of suspect and bizarre electoral outcomes and the transient outrage they may engender, vote counting becomes again a “process” issue, rather abstract, something to discuss politely—or, better yet, let other people discuss politely—but hardly a top-priority, urgent, storm-the-Bastille matter.

Nonetheless it is on that seemingly unspectacular process issue—the simple question of whether votes counted unobservably can ever be the trusted basis for the electoral translation process at the core of democracy—that I believe we must ultimately make our stand. If you took all the analyses in this book—every calculation of the red shift, every flipped vote, every suspect result, all evidence of fraud, and the whole big picture of political incongruence—and tossed them in the trashcan, if you said it was all a conspiracy theorist's mirage, *what we'd still have sitting on the table in front of us is an unobservable vote*

*counting process.* Without a public and observable count or audit, elections are fatally compromised as the legitimate foundation of democracy, *and this basic truth requires no forensics, direct or indirect, to establish.*

There is essentially no way of knowing what the collective intent of the public, as expressed in the votes cast in thousands of elections in the computerized voting era, really has been. Successfully rigged, unsuccessfully rigged, partially rigged, pristine; legitimate or illegitimate: *the count is unobservable so there is simply no way to know.* That is one hell of a stupid risk and *that is the real problem,* though it very unfortunately seems to come into focus only when specific outcomes are such that major-league fraud is suspected.

Indeed, there are some still demanding a “re-vote” of E2016<sup>1</sup>—with good reason, perhaps, though no real hope. But we neither expect, nor indeed seek, to remedy past fraud, to re-do elections, to unseat even the most suspiciously elected officeholders. We can’t go back to E2014, let alone E2010 or E2004; even actionable investigation into 2016’s putrescent elections has long exceeded its sell-by date and become academic, the “Russians” notwithstanding. There *is* no going back. That is all water under the bridge and, even if we suspect it is filthy and polluted water, there is nothing in the real world to be done about it.

*The only remedy we seek is prospective*—that we *begin,* in our communities and as a nation, to count our votes once again in public and not in the partisan, proprietary, pitch-dark of cyberspace. That is the very most or, to put it another way for those fearful of upheaval or instability, the very “worst” that can come of all our efforts to have the matter of vote counting in America taken seriously.

An observable count of votes will not immediately undo the anti-democratic damage that has been inflicted upon our electoral and political systems during the era of computerized voting. Districts will remain gerrymandered; voter suppression schemes will still be on the books; *Citizens United* will remain the law of the land and floods of corporate cash will not be readily diverted; the federal courts will stay stacked. The Age of Trump may have arrived by fraud but it will not turn out to have been fake news. It is a very, very deep hole America has dug. *But without observable vote counting Americans will have not even a shovel with which to try to dig our nation out.*

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<sup>1</sup> See, e.g., <https://twitter.com/mikefarb1?lang=en>; see also <https://www.cnn.com/2017/09/18/politics/hillary-clinton-2016-trump/index.html>.

## Rights and Duties

The great task that confronts us is that of changing a process passively accepted as a *fait accompli* and currently possessing the vast weight of legal, bureaucratic, and habitual inertias.

This simple but fundamental change, to an observable counting system, will require a reawakening in the American citizenry of a compelling sense of both its collective rights in, and concomitant duties to, our democracy. For can we not agree that the majestic *right* to honest elections and an observable votecount carries with it the comparatively trivial *duty* once in each of our lifetimes to be a participant in that counting process? If we nevertheless insist on outsourcing that collective duty to others, indeed to a few unvetted corporations operating behind a proprietary curtain of secrecy, have we not thereby acquiesced in the compromise of the treasured right? If we place convenience, expediency, or our own ease and entertainment first, ahead of this basic duty to our democracy, can we really be judged to *deserve* that democracy as our right?

So three fundamental questions must be addressed in the name of election integrity:

- 1) Are the citizens of America willing to stand up for the right to an observable count as intrinsic to the right to vote?
- 2) Are the citizens of America willing to fight secret vote counting with the same energy that they would fight mass discrimination and disenfranchisement or pursue passionate policy goals such as gun control, environmental stewardship, economic justice, or peace?
- 3) Are the citizens of America willing to assume the modest burden of direct participation that an observable count or audit would impose on them?

Progress on each front will require powerful initiatives of education and outreach, encompassing all age-groups<sup>2</sup> and political creeds, employing all

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<sup>2</sup> Recent developments following the Parkland school shootings demonstrate the energy and determination of America's young. The Parkland students have led and inspired millions across America to insist upon change and a legislative response to their demands. These young voters and voters-to-be quickly came to recognize and articulate

available media, including a major reliance on bottom-up social media to compensate for the sluggishness, stubborn indifference, and deliberate gatekeeping and stonewalling of established top-down media. And “opinion leaders” *outside* of politics—writers, athletes, students, entertainers with Facebook and Twitter audiences that guarantee that your thoughts and messages will be heard collectively by millions—*please take special note*: this is your era; your influence can be profound; you are indeed “followed.”

Fortunately, the ground is fertile for this campaign: when voters were asked in a national poll taken in October 2012, “Would you be willing to work as a volunteer vote counter for 4 hours at some time during your lifetime as part of a national effort to make vote counting in our elections public and observable?” a solid majority of 57 percent responded “Yes” (to 23 percent “No”).<sup>3</sup> That represents 80 million Americans willing to put in the hours necessary to have a fully public, unpaid vote-counting “labor force” for American elections.<sup>4</sup> In 2018, in an America where elections appear to “matter” more than they have in living memory, that number would undoubtedly be still higher.

It is now our job not only to impress this reality upon reflexively nay-saying election administrators and politicians, but to let the American people know what we may not yet know about ourselves: that we are ready and willing to work for and serve our democracy, that we are more genuinely patriotic than anyone would have guessed.

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that electoral change would be essential to their ultimate success. They are but one small step away from embracing with equal fervor the necessity of protecting those elections upon which their hopes hang.

<sup>3</sup> Positive response was found among majorities of both Democratic and Republican voters, across all age groups, among both white and minority voters, and in all geographic regions. In response to a companion question, fully 60% of voters expressed either some or a great deal of “worry” that “insiders or hackers could change the results of important elections by manipulating the Electronic Vote Counting Systems that count the votes here in America,” a majority again maintained across the political spectrum—and of course years prior to any thoughts of Russian meddling (poll conducted by Zogby Analytics 10/28 – 10/30/2012; Margin of Error +/- 3.4%; polling in advance of an election provides a better picture of public concern regarding election integrity than do post-election polls, in which doubts are expressed disproportionately by the losers).

<sup>4</sup> In a typical protocol that has been proposed, citizens would be vetted, as they are for jury duty, and would work in teams of three counters selected from pools representing each major party and minor party/independent voters, so both major parties and the growing remainder of the electorate would be represented in each counting team and at least three sets of eyes would be on every ballot counted or audited.

## How to Get There from Here?

At this point in prior editions I proposed steps like counting or auditing mock elections as training for the real thing and to show it could be done.<sup>5</sup> I'm going to skip over that now—we're past it. We're in the Age of Trump, the Age of Lies, a fractured nation living on the edge, and the time is short. The Dutch took a whiff of our 2016 election and then took one weekend to decide to count their 2017 national election by hand in public; the Norwegians not much longer. If we are going to allow a plutocratic oligarchy to rule our country, we really don't have to *bother* with elections. But if we're *going* to bother with elections, we'd damned well better restore their integrity before fatal damage is done, and done in our name.

So I propose a "We Count" Campaign to recruit a public counting force in every state, collaborating with established good-government and civil-liberties organizations (e.g., the NAACP, the ACLU, Common Cause) and using our growing understanding of social media to spread the word far and wide and fast. Observable counting and even public auditing have been reflexively written off not only as a Luddite retreat (who needs humans to do anything when you have computers booted up and ready to go?) but also as impractical and unduly burdensome to administrators and citizenry alike.

"Where are we ever going to dig up folks willing to stay late and count?" is the first question election administrators generally ask.

It is up to us as a public to *show* them where, to present the Election Boards of every state and locality with teeming rosters of signees, each testifying that he or she is committed to the job and volunteering to be called upon as a counter on Election Night. "We are not demanding that our country do something for us," our We Count campaign, echoing JFK, would let it be known to all. "We are demanding that we be permitted to do this for our country."

And yes, it is doable. One county does it now and has been doing it for several years. In Columbia County, New York, the Elections Board opens their opscans at the close of voting and proceeds to count the voter-marked ballots within,

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<sup>5</sup> Having participated in a pilot for such an undertaking, I am happy to report that even the counting of mock ballots in what we all knew was a mock election brought out a genuine *esprit de corps* in every one of the two dozen or so counters. Two hours flew by and, although the election was "mock," the feeling of civic pride in the room was very real.

a full 100 percent canvass as a check against the computers. The two Co-Commissioners of Elections, Democrat Virginia Martin and Republican Jason Nastke, recognized the vulnerability of the computers to error and manipulation and resolved that they would not be signing their names to and certifying election results embodying that risk. They fine-tuned and streamlined their process over several election cycles. No one is complaining; no bad actor, of course, would think of pulling a stunt like off-setting the zero-counters; and Columbia County has become a shining example of civic engagement. Perhaps some of the other 3,143 counties in our country will take notice, give Commissioners Martin and Nastke (who will be pleased to offer guidance) a call, ask them how it's done. It is time to ask, ourselves and each other, "Why not?"

One can imagine an Election Night as congregational and celebratory as New Year's Eve—Americans of all stripes at work together in our democracy's service. This vision, this revival can be ours—our new reality for the New American Century. Why not, indeed?! It is, ultimately, up to us.

### **Linking Arms, Metaphorically and Physically**

Looking forward then, our plan of action is first and foremost to raise consciousness about the critical importance of observable vote counting for the health, well-being, and ultimate survival of our democracy; about the public duties inherent in this process; and about its demonstrable practicality. We believe the American people are prepared for this revisiting of the meaning of participatory democracy and will respond with enthusiasm and determination to a well-framed, well-presented, and well-publicized call to action.

We need to understand though that scattered and inchoate demands for observable vote counting will not be enough. This is no "niche" issue. Its implications could not be broader or deeper—yet it has wandered the streets like an orphan in rags. One can only imagine where we would be today if just a few of those groups whose agendas and visions rest so heavily on the outcomes of American elections had devoted even a titling of their energies to electoral integrity and reclaiming the vote counting process from behind the cyber-curtain.

Instead, here we are, our political discourse plunging lower than most of us would have ever thought possible and promising to descend lower still, our nation fractured and sinking in the quicksand of political mistrust and disgust.

Now, at this late hour, I call again upon *all* activists—all advocates for all the specific embodiments of peace, justice, fairness, humanity, ecological sanity, and democracy itself—to grasp the big picture and recognize that the strife of the New American Century is not simply a scattered bunch of isolated skirmishes and battles. It is, sadly, a war.

The forces of control and domination understand this and are pursuing an integrated strategy to drive us off common ground and destroy democracy at its roots. Failure to comprehend that and respond accordingly will lead the defenders of democracy and advocates for its many blessings to a general and catastrophic defeat. As my colleagues Victoria Collier and Ben Ptashnik—in calling for all advocates of progressive, ecological, human-rights, and pro-democracy causes to recognize the critical salience of honest elections and observable vote counting to the fate of their own individual agendas—wrote in 2014:

We cannot continue struggling separately for myriad causes, while social progress is reversed piecemeal and democracy itself dismantled. Unless we organize *to preserve the ability of the people to shape public policy (i.e., to have their votes counted honestly and accurately)*, it is crystal clear that there will be no justice, no peace, no ecological sustainability, no amelioration of climate change and no end to poverty and economic oppression. Now is the time to link our formidable strengths as organizers and activists.<sup>6</sup>

It is a great mistake to believe that Donald Trump has done this work for us simply by provoking an impassioned opposition. Sure, there is a raging “resistance,” and every day you can read dozens of erudite condemnations of this or that revolting policy or behavior and thousands of tweets and comments conveying varying degrees of revulsion.

What does it all add up to? Pending E2018 and E2020, just about nothing.

I have made this point several times in earlier chapters, but it bears repeating now. Elections remain the official scorecard, and the only official scorecard, of American politics. When we ask what is fake and what is real, what is truth and what is lie; what is cynical, pathological, vainglorious, authoritarian, dangerous, unconscionable; what is good for our country or the planet, what

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<sup>6</sup> See “A National Call to Link Arms for Democracy,” *Truthout* (5/31/2014); <http://www.truth-out.org/opinion/item/24033-a-national-call-to-link-arms-for-democracy>.

is very bad: the polls and our eyes and ears tell us that none of these questions have consensus answers, however strong our own feelings may be. We await the biennial election, when the nation is permitted to exercise its collective right of review, when the official scorecard is filled in in ink, when democracy enjoys what should be its finest moment. Everything in the meantime—every disclosure, every argument, every momentary “touché!” triumph—waits upon that day of judgment. And never has it been more truly said that he who laughs last, laughs best.

Consider the Parkland students. What began as a cry of anguish and a plea for remedial action soon morphed into an electoral exhortation. The students organized, marched, petitioned—what they were asking for was sane and reasonable, a basic protection, not to have to go to school in mortal fear, not to keep seeing happen to others their age, in the schools and in the streets, what had happened to their classmates and friends—but they quickly realized that there would be no action, no redress, nothing but “thoughts and prayers” and lip service, without a seismic change in the political lineup in Washington and in the states. So they began to talk about voting and look to E2018 as the key to the realization of their goals. One group began a movement called “Parents Promise to Kids,”<sup>7</sup> centered on a contract consisting of a single sentence:

“I/We [parent name(s)] promise to [child name(s)] that I/We will vote for legislative leaders who support our children’s safety over guns.”

They established a Twitter presence and expanded to a grandparents’ contract, with teachers on the horizon; they are in the process of producing candidate ratings. Parkland student David Hogg, as of this writing, has 780,000 Twitter followers (118,000 more than the NRA); his fellow student Emma Gonzalez has more than twice that many.

The students rolled up their sleeves, started speaking their minds and hearts, and truth and sense to power, used the gifts of the Information Age, and became a political force to be reckoned with virtually overnight. Most of them, and several million others across America, will be old enough to vote for the first time this year. They will go to the polls—and they will urge their friends, families, followers to go to the polls—to make a difference, to bring a vital change to our country.

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<sup>7</sup> See <https://www.parentspromisetokids.org/>.

The Parkland students are smart and they are well educated. They certainly know about some of the obstacles in their path (aside from the personal mud flung at them by petrified right-wing critics): gerrymandering, Big \$\$, voter suppression, the legendary muscle of the NRA. They seem to believe these can all be overcome.

They almost certainly are *not* aware of computerized election theft, any more than are most advocates for other good and vital causes in our country. One can imagine what an inexplicable (to them) electoral defeat would do to their zeal for participatory democracy, their sense that they have a voice. Will the young—momentarily inspired—then join the ranks of the other disillusioned and self-disenfranchised constituencies whose “low turnout” is said to be responsible for the political lay of the American land, why things are as they are? Such disillusionment defeats democracy as surely as do dictators with tanks.

But what if the Parkland students and their host of followers went one step farther? They quickly recognized that *marching* wasn’t enough, that it would take *voting*. What if they grasped that *voting* wasn’t enough, that it would take ensuring the honest and accurate *counting* of those votes? And what if they took it even one step *farther* and said, “That’s a job we can do!” and then produced *another* contract, also consisting of a single, simple sentence:

“I [name of student/parent/teacher] promise that I will be available to serve as a volunteer counter or auditor of votes in one primary or general election in my county in 2018.”

How powerful would that be! How “Ask not what your country can do for you . . .!”

Perhaps it will come to pass, just so. But the rest of us should not be proud of waiting for the students to come to our rescue. 137,125,484 of us (officially) voted for president in 2016; millions more were frustrated in the attempt by various, often discriminatory, hurdles; and millions too have given up, either in political disillusionment or in the conviction that their votes have no impact or are outright not counted.

Like the Parkland students, we all have causes, we all have passions (especially now), and we all have a stake. One way or another, we will have to come

together and work together in our demand for observable vote counting. And we will have to *focus* that demand and apply it like a welder's torch to the joints of the electoral system—from the local administrators who are responsible for many of the decisions impacting the conduct of our elections, to the federal and state governments that could provide comprehensive reform with the stroke of a pen.<sup>8</sup>

We will also have to be prepared to back up our demand for observable vote counting with civil action and, to the extent that all more cooperative tactics have been exhausted, with civil disobedience.

Why such a drastic call to action? Why not just start, or continue, writing letters to the editors and our representatives? Why not just keep gathering data, doing analyses, comparing exit polls and votecounts, making alarming statements about this or that aspect of a process that has long been a rock of national faith, quite likely the very first thing that comes into your mind when you think of the great achievements of America?

*Because the system has proven itself terminally unresponsive.* And because it has been designed, or re-designed, to withhold its best evidence, to tease us with exit polls and baselines, anomalies and upslopes, while keeping concealed the only data that could definitively answer the critical questions of whether the vote counting was honest and accurate, and who actually won each and every election.

And because the national crisis that is the Age of Trump has changed the game and drastically shortened what was already an urgent timeframe. Our concealed electoral process, like a maliciously programmed self-driving car, has carried America off-road to the edge of a cliff. We have, measured in political time, a split second to take the wheel and start steering again. The gains that have been made through the “inside game” of conventional lobbying for change—some DREs ditched in one state, equipment “modernized” in some others, a dreadful bill blocked here, a slightly less dreadful one passed there, a paltry and grossly inadequate sum appropriated for security upgrades

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<sup>8</sup> In the short term—given the manifest vulnerability of E2018 and given that, in many if not most states, recounts are effectively unobtainable—an immediate push must be made for legislation opening the door (and removing the insurmountable hurdles, both financial and administrative) to recounts when reasonable questions arise regarding the computer counts in contests this November. See <https://www.opednews.com/articles/US-Elections-Under-Attack-by-Allegra-Dengler-Elections-And-Campaigns-Elections-Candidates-Funding-Hackers-180426-397.html>.

with vague encouragement to vote on paper (possibly with votes converted to barcodes!) and experiment with some audits—fall so far short of what is needed that, with full respect for the efforts invested in this approach, it is like coming running with a cup of water to put out a wildfire.

What is needed is the immediate restoration of a public, observable vote counting process—achieved either through the manual counting of voter-marked paper ballots or through a uniform, public, and statistically sufficient manual auditing process. Nothing less will serve to protect our electoral process from both foreign and domestic meddling. And nothing less will provide a basis for the restoration of public trust in the legitimacy of our electoral results.

With conventional approaches having shown their inadequacy to this purpose—the reform being far too little and far too slow—and with the voting process itself so likely compromised and the power of the vote itself thereby effectively negated, where can we as a public turn? Put very bluntly, what are our remaining weapons in this fight?

### **We're Not Buying**

If you are a voter, the odds are that you are also a worker and/or a taxpayer, and you are almost certainly a consumer. Your power as a voter may be compromised by voter suppression schemes, gerrymandering, the Electoral College, and of course vote-count manipulation. But your powers as a worker, taxpayer, and consumer remain very much intact. General strikes and tax revolts have served throughout both ancient and modern history as instruments for conveying the public will when the electoral process or democracy itself has broken down.<sup>9</sup> They are blunt instruments, certainly not to be undertaken lightly, and they are risky in terms of the welfare of both the participants and those adversely affected by the interruption in commerce or services.

I submit, however, that it is our power as *consumers* that has grown immense, while carrying by far the least risk of collateral damage. America, for better or worse, is the epitome of consumer capitalism—its economic engine runs on a fuel in which consumer demand is the most essential ingredient. Put simply, “[p]ersonal expenditure by U.S. consumers accounts for two-thirds of all

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<sup>9</sup> Aristophanes, in *Lysistrata* (411 BC), conjures a general strike of sorts, in which the women of Greece band together to withhold sex from their men until they end the Peloponnesian War and make peace. The women of Greece, of course, were not voters.

spending in the United States and is the primary driver of economic growth.”<sup>10</sup> And of course “growth” is essential, so consumers must do their patriotic duty by finding more and more not-really-necessary products to buy. The vast majority of corporations are exquisitely sensitive to even the most modest declines in revenue. A 2 percent drop is a sure bet to send a boardroom into panic mode.

If I were an American CEO with a religious bent, I think that I would kneel by my bed every night and pray that when I awoke American consumers would still be oblivious to the power they wielded over me and, through me, over their unresponsive elected representatives.<sup>11</sup> Imagine yet another Parkland contract, even simpler:

“We’re not buying till kids stop dying.”

That’s right, nothing but what is truly needed, the essentials. No new flat screens, no iPhone XVIII (won’t the XVII do?), no Netflix, no to that new SUV, no to jewelry, no to designer jeans, no to that Instapot upgrade, no to the latest “smart” appliance. Of course the power to stop buying nonessentials depends on what portion of one’s wealth and income goes to the purchase of *essentials*. Income and wealth inequalities in America are such that, for too many millions, virtually every purchase may be an essential. But everyone with disposable income knows what they need and what they don’t, what they buy to keep up with the Joneses or because it’s bright and shining and feels good to buy. Everyone can reckon honestly with themselves whether there is something they can do without—and, collectively, we can do without quite literally trillions of dollars in bright and shining goods every year.<sup>12</sup> That is one hell of a dent in the corporate bottom line.

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<sup>10</sup> See <https://247wallst.com/special-report/2017/12/22/what-americans-spent-in-2017/>.

<sup>11</sup> This frustration crosses the aisle. In a recent Rasmussen poll of Republican voters (Rasmussen’s LVCN methodology is, ironically, more reliable when sampling this partisan subset), a mere 24% believed their own GOP representatives have done a good job representing their party’s values; 62% said their representatives had lost touch (see [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/april\\_2018/voters\\_think\\_both\\_parties\\_have\\_lost\\_touch](http://www.rasmussenreports.com/public_content/politics/general_politics/april_2018/voters_think_both_parties_have_lost_touch)).

<sup>12</sup> See <https://www.bea.gov/iTable/iTable.cfm?ReqID=19&step=2#reqid=19&step=3&isuri=1&1921=underlying&1903=2017>; total U.S. personal consumption expenditures for 2017 topped \$53 trillion; televisions alone accounted for over \$160 billion.

If these numbers seem absurdly high, it is because money *circulates*, so the same dollar will find itself in the hands of many consumers and subject to many individual

This is a sleeping giant, an enormous power yet untapped. The goal, of course, is not to bring down the American economy. Rather it is to compel legislative action in the face of a broken and corrupted electoral process—essentially an alternate way of speaking clearly when a corrupted counting process has garbled the speech of votes. We witnessed the force of economics in action when, to take one recent example, North Carolina passed the execrable “bathroom bill” that illogically compelled genders to use the bathroom dictated by their birth certificates, regardless of their life choices, actual nature, and appearance. Businesses, institutions, and individuals reacted by pulling out of the state in various ways and, in short order, the politicians reconsidered and passed a new, less draconian bill.<sup>13</sup>

Take any state. Let’s choose, for example, Wisconsin—following Trump confidant Roger Stone’s remarkable assertion that multiple elections in the state have been electronically rigged.<sup>14</sup> What would a Parkland-style pledge look like in Wisconsin?

“We the voters and consumers of Wisconsin pledge to refrain from purchasing all luxury items and other nonessential consumer goods until such time as the state government drafts and passes legislation restoring public, observable vote counting to all elections within the state’s jurisdiction.”

I can’t speak for all, but I personally would find the passing up of the latest 67” plasma TV in service to a vital cause to be relatively painless. It would most likely feel *good* to save some money *and* come to our democracy’s rescue. On the other end, how long would it take before the corporate poohbahs met with Wisconsin Governor Scott Walker and the legislative brass to draft that legislation? I doubt they’d hold out for a month. So Wisconsin—and, by

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spending choices in the course of a year—which is part of what lends consumer choice such staggering potential political force.

<sup>13</sup> See <https://www.reuters.com/article/us-north-carolina-lgbt/seeking-end-to-boycott-north-carolina-rescinds-transgender-bathroom-law-idUSKBN1711V4>.

<sup>14</sup> See <http://thehill.com/blogs/pundits-blog/presidential-campaign/291534-can-the-2016-election-be-rigged-you-bet>  
<http://thehill.com/blogs/pundits-blog/presidential-campaign/291534-can-the-2016-election-be-rigged-you-bet>.

replication, the nation—could have hand-counted paper ballots and/or a solid audit process<sup>15</sup> in place by November.

### **Invitation to an OpSCAN Party**

Such economic actions are by nature mass actions, requiring broad participation—or buy-in, if you will—to be successful. There is also a more focal approach, specific to the conduct of the election itself, that may be undertaken to good effect on the local level and yet achieve national impact. It relates back to the design-for-concealment of the computerized voting system, the withholding of its best evidence. *That evidence is the voter-marked ballot.* With the slow turn away from DREs, the paper ballot is becoming increasingly prevalent, and may even soon be mandatory. Yet it remains, for all practical purposes, entirely concealed, imprisoned in the catch-bins of the opscans that count the lion’s share of our votes throughout the land.<sup>16</sup>

When the Civil Rights movement sought a breakthrough in overcoming the deeply ingrained prejudices and practices of oppression, its leaders knew that letters and speeches, and even great marches, were not enough. The torch had to be applied to the joint—the school bus, the lunch counter, the college steps—the situs for the denial of rights. When the anti-nuclear movement sought to stop the proliferation of weapons and power plants, the situs was the missile silo and the power plant gate. When the earliest, Civil War-era suffragettes sought the vote for women, the situs was the voting booth, where they went to cast a vote and be arrested for having done so.<sup>17</sup>

The situs for an observable vote count is where the ballots *are*. On Election Night.

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<sup>15</sup> See Chapter VII, Study VIII for my draft proposal for such an audit protocol.

<sup>16</sup> The battle over digital ballot images—their creation and destruction—is being fought state by state. While these images could bring a measure of transparency and verifiability to elections, the resistance to their preservation among election administrators, especially in states and counties that have been host to some of the most suspect elections of the computerized voting era, has been formidable (see <https://www.electiondefense.org/digital-ballot-images/>).

The efforts of election integrity advocates John Brakey and Chris Sautter in the ballot-images battle have been tenacious and heroic.

<sup>17</sup> See Jill Lepore, “The Woman Card,” *The New Yorker* (6/27/2016), p.23.

Secret vs. observable vote counting comes down to the question “Whose ballots are they? To whom do they belong?” I think the answer could not be clearer: those are *our* ballots; they should belong to the voters, the people, with the state as custodian. But, right now, not only don’t they belong to us, we can’t even borrow them, can’t even look at them, let alone count them. They’ve been handed over, uncounted, to the state, which has outsourced them to a few private corporations, and all powers agree that that is the last the voters will ever see of them. They are off-limits, along with the hardware and software used to turn them into binary digits and combine and process and transport those bits and bytes behind a proprietary cyber-curtain where none of us can see.

The Boston Tea Party, which took place in 1773, was an on-site protest against the “taxation without representation” to which the American colonists were subjected. It was instrumental in the process that gave birth to our nation—though it was essentially about money and involved the destruction of property, the 342 chests of tea dumped into Boston Harbor.

Now, nearly two and a half centuries of national history later, we find *ourselves* in the shoes of patriots aggrieved by a loss of sovereignty. We have written the letters, gathered the data, performed the analyses, offered the evidence, begged and pleaded and protested—to no avail. Elections remain outsourced, secret, suspect; our politics ever more poisonous. Can we act? Can we gather and link arms for an Opscan Party?

Our latter-day act of nation-saving disobedience, an Opscan Party involves neither money nor the destruction of property. It is a peaceful and very simple reclamation of the right to a public and observable counting of our votes. To participate, you would simply pull together a group of about a dozen voters from your precinct; remain there at the close of voting; form a circle around the optical scanner; link arms and request that the scanner be opened, the ballots removed, a public and observable human count of at least one major contest initiated, the numbers compared with the tally from the opscan, and the ballots returned to the precinct for storage. You would remain in a circle around the opscan until that request was honored or until you were removed. When asked what right you are asserting, you could answer, “The people’s right to an observable vote count. Those are our ballots.” You would record the proceedings for public posting and sharing. It would surely go viral.

An Opscan Party is a powerful and appropriate action in a number of ways. It is neither labor- nor capital-intensive. It is quintessentially local yet would carry profound national impact. It is neither destructive nor dependent on force. It meets the problem exactly where the problem *is*, where and when our ballots are captured and taken away from us. And perhaps most important, it is unmistakably *just*, and can hardly be perceived or fairly portrayed as anything but.

Imagine an Election Night with a hundred (or more) Opscan Parties organized across our nation. In some localities, where poll workers were won over, opscans would be opened and public counts undertaken. Perhaps disparities will be revealed, perhaps not; the breakthrough act of public counting is enough. In other places, the request would be denied and the “partiers” removed. Perhaps among them will be a few who are widely known, opinion leaders, celebrities: their removal would, by the handbook of modern media practice, *have* to be covered. And social media would spread the videos showing the encounters, whether cooperative or confrontational, at the place and at the time of greatest relevance and impact—*our* lunch counter, *our* school bus, *our* college gate.

*Any* of the above outcomes would be, in its own way, a game-changer. All have in common the recognition that the public is no longer on the outside trying in vain to look in through windows that have been painted black. This is not academic. This is not statistical. This is a very simple and direct question about a very precious kind of information. To whom does it belong? “Those are our ballots and we are here to assume the duty of counting them!”

For those made queasy by the prospect of “civil disobedience,” confrontation, arrest, I can only point to the fact that freedom of assembly is a crucial right with roots in the deepest strata of our political and cultural heritage, and ask that we do more than pay mere lip service to it as a useless relic. We are being told to be good little passive citizens, cast a vote (or not) then go home and sit back and enjoy the show. *We are better than that*. And we are stronger, if we only knew. If we want our democracy, if we are to deserve it, we have the right *and* the duty to do more.

I ask what has become of the courage that founded this country, that steered it through shoals of prejudice, inequity, and oppression to the America The Almost Beautiful into which most of us were born? Have we not the energies of our forebears—the Suffragettes, the Freedom Riders, Joe Hill, Rosa Parks,

Dorothy Cotton, Medgar Evers, Martin Luther King Jr., Heather Heyer, the Standing Rock Water Protectors, the countless protesters against injustice? We would not be what and where we are as a people and a nation without their energies, their often-lonely bravery.

Can we bring a fraction of such energy and such bravery to bear on the test of our times, the reclamation of this most fundamental right of all, an honest election, the bedrock protocol of any democracy? Are we content instead to stand futilely by as the concealment of the vote counting process enables a distortion of the public will that results in, and appears to have already resulted in, a loss of public sovereignty and an all-too-visible breakdown of the political process? That loss of sovereignty and that breakdown lead ultimately either to destructive revolution or to torpid resignation—America The Ugly. There is just too much at stake to stand by.

### **Final Word**

It all begins with communication. The most important single action you and I can take—it is my charge to all who have read this book—is to *communicate*: to write, or text, or email, or simply *talk* to others about this issue, about *CODE RED*, about what we are facing, about what we can do. Organization builds on communication. And meaningful action will spring from organization.

My goal in writing this book has been to bring the issue of vote counting, and the perils it presents in the New American Century, into the public discourse. I hope also that reading *CODE RED* will help those who have been keeping to themselves their suspicions, concerns, or outrage about our faith-based, man-behind-the-curtain electoral system to recognize that they are neither crazy nor alone.

There are genuinely difficult problems facing us as a nation and as a species in the years to come: climate change, over-population, food and resource distribution, weapons control, the security-versus-privacy dilemma, and all manner of bio-ethical challenges, just to name a few. Religious or secular, we have long approached our planet from a standpoint of dominion and are just now learning—with great reluctance and resistance from some quarters—to assume a ministerial rather than magisterial role on Earth.

Compared to these challenges, the basic counting of votes—in an observable way that ensures the legitimacy of our elections and vouchsafes the public an undistorted voice in the making of all these hard choices—is an easy

assignment. We need only to break a spell that has been cast on us—a spell of convenience, passivity, helplessness. We need only remember that democracy is not something that we watch; it is something that we do.

— VII —

## EVIDENCE AND ANALYSIS<sup>1</sup>

*“The devil is in the details.”*

— *Anonymous*

### STUDY I.

## The 2004 Presidential Election: Who Won the Popular Vote?

### An Examination of the Comparative Validity of Exit Poll and Vote Count Data

January 2, 2005

Jonathan D. Simon, J.D.

Ron P. Baiman, Ph.D.  
Institute of Government and Public Affairs  
University of Illinois at Chicago

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<sup>1</sup> The studies in this chapter are presented as initially published. Certain references and links available at the time of publication may no longer be accessible.

## **Executive Summary**

> There is a substantial disparity—well outside the margin of error and outcome-determinative—between the national exit poll and the popular vote count.

> The possible causes of the disparity would be random error, a skewed exit poll, or breakdown in the fairness of the voting process and accuracy of the vote count.

> Analysis shows that the disparity cannot reasonably be accounted for by chance or random error.

> Evidence does not support hypotheses that the disparity was produced by problems with the exit poll.

> Widespread breakdown in the fairness of the voting process and accuracy of the vote count are the most likely explanations for the disparity.

> In an accurate count of a free and fair election, the strong likelihood is that Kerry would have been the winner of the popular vote.

## **The Significance of a Popular Vote Victory**

Although it is the Electoral College and not the popular vote that legally elects the president, winning the popular vote does have considerable psychological and practical significance. It is fair to say, to take a recent example, that had Al Gore not enjoyed a popular vote margin in 2000, he would not have had standing in the court of public opinion to maintain his post-election challenge for more than a month up until its ultimate foreclosure by the Supreme Court.

In the 2004 election now under scrutiny, the popular vote again has played a critical role. George Bush's apparent margin of 3.3 million votes clearly influenced the timing of John Kerry's concession. Although the election was once again close enough that yet-to-be-counted votes offered at least the mathematical possibility of a Kerry electoral college victory—and although, once again, concerns about vote counting were beginning to emerge from early post-election reports and analyses—Kerry apparently believed that, unlike popular vote-winner Gore, he did not have effective standing to prolong the race.

As ongoing inquiries continue to raise serious vote counting issues, Bush's apparent popular vote margin has loomed large as a rationale for minimizing these issues, at least as far as their impact on the outcome of the race. While much concern has been expressed about “counting every vote,” even the Kerry

camp has issued disclaimers to the effect that their candidate does not expect that so doing will alter the outcome.

With the results in Ohio currently subject to both recount proceedings and legal contest, dramatic developments compelling a reversal of the Ohio result cannot be ruled out at this time. Yet to overturn the Ohio result, giving Kerry an electoral college victory (or even to disqualify the Ohio electors via challenge in Congress, which would deprive Bush of an electoral college majority and throw the election to the House of Representatives), would likely be regarded as unjust and insupportable by a populace convinced that Bush was, by some 3.3 million votes, the people's choice.

Thus, although the popular vote does not legally determine the presidency, its significance is such that we must give due consideration to any evidence that puts the popular vote count itself at issue.

### **Sources of the Exit Poll and Vote-count Numbers**

As the analysis we undertake below is based upon the conflict between two sets of numbers, one generated by the exit polls for the presidential race and the other generated by the vote counting equipment, it is necessary to review the nature of the two sources of results. Exit polling, since its invention several decades ago, has performed reliably in the projection of thousands of races, both here at home and, more recently, abroad.<sup>2</sup> The record of exit polling from the 1970s through the 1990s was essentially free of controversy, except for the complaint that publication of exit poll results prior to poll closings dampened voter turnout by discouraging late-in-day voters from bothering to vote, the race having already been "called."<sup>3</sup> Voters could be so influenced because they had come, indeed, to regard exit poll projections as all but infallible. Significant exit polling problems began to appear along with the development and spread of computerized vote counting equipment, since which time exit polls have had a notably poorer track record in spite of improvements in polling methodology.

Compared to standard pre-election polling, exit polling has certain advantages and disadvantages. On the plus side, exit polls sample actual rather than just "likely" voters and do not fail to include voters who are not attached to a

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<sup>2</sup> See *Polling and Presidential Election Coverage*, Lavrakas, Paul J, and Holley, Jack K., eds., Newbury Park, CA: Sage; pp. 83-99.

<sup>3</sup> This problem was theoretically resolved by a gentlemen's agreement to withhold release of exit poll calls until the polls had closed.

conventional phone line or who screen their calls.<sup>4</sup> This results in significantly greater accuracy. On the minus side, exit polls employ a cluster sampling technique, grouping respondents by precinct, rather than a fully homogenized random sample of the target venue. This results in somewhat less accuracy. On the whole, the advantages in accuracy an exit poll enjoys over a pre-election poll of the same sample size tend to outweigh the disadvantages.

The exit polling in Election 2004 was performed by the combined firms of Mitofsky International and Edison Media Research, under exclusive contract as “official provider” of exit poll data to six major media organizations (CBS, NBC, ABC, CNN, Fox News Channel, and the Associated Press), which collectively formed the National Election Pool.<sup>5</sup> Exit polling operations were under the principal direction of Warren Mitofsky, credited as the inventor of exit polling and recognized throughout the world as the leading expert in the field. With over 35 years of exit polling experience, encompassing nearly 3,000 electoral contests in the United States and abroad, Mitofsky has achieved consistent success in the field and has continued throughout his career to refine and improve the methodologies and protocols of exit polling.<sup>6</sup> In 1999 Mitofsky received the Award for Lifetime Achievement from the American Association for Public Opinion Research.

Election 2004 presented a particular challenge and opportunity for Mr. Mitofsky, whose exit polling operation was hampered in 2002 by a massive computer breakdown.<sup>7</sup> It has been reported that preparations for Election 2004 were especially thorough, entailing increased staff numbers and training, upgraded computer hardware and software, expanded surveys of absentee and early voters, and dry runs beginning in July to prepare analysts for the full spectrum of possible election night scenarios.<sup>8</sup> It may fairly be said that the exit

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<sup>4</sup> Because only actual voters are included, these might more accurately be referred to as “exit samples” rather than “exit polls.”

<sup>5</sup> As described in the National Election Pool Edison Media Research/Mitofsky International homepage: [www.exit-poll.net/index.html](http://www.exit-poll.net/index.html).

<sup>6</sup> Exit polling has been relied upon as a check mechanism for the vote counting processes in numerous foreign elections. Indeed, Mitofsky himself received public commendation from Mexican President Carlos Salinas for his contribution to the credibility of that nation’s 1994 election. Most recently, exit polling has been instrumental in the overturning of election results and the ordering of a new election in the Ukraine.

<sup>7</sup> As a result, exit polls were not employed in the projection of election outcomes in 2002.

<sup>8</sup> Newark *Star-Ledger*, 10/28/2004, page 1, “Networks Will Look to Somerville on Tuesday.” See also, Bauder, D., “TV Networks to Test New Exit Polling System,” *The*

polling for Election 2004 was a more advanced, sophisticated, and meticulous operation than any previously undertaken.

In contrast to the uniform methodology of the exit polls, a variety of methods are employed to record votes on election day, including optical scan devices, direct electronic recording (DREs or “touchscreens”), punch cards, paper ballots, lever machines, and data-point devices, in that order of prevalence. An additional variety of methods are then employed to transmit these votes to central locations and tally them at the county and state levels. Ownership and operation of this mosaic of machinery is fully privatized and is concentrated predominantly in the hands of four corporations: Diebold, ES&S, Sequoia, and Hart Intercivic. The partisan proclivities and activities of each of these corporations are a matter of public record.<sup>9</sup>

Because of the proprietary nature of the election system throughout the United States, these vendors of the voting equipment design, program, operate, maintain, and repair it at every level, most often without outside or public scrutiny, and with at best a minimal process of testing and certification.<sup>10</sup> Boards of Election and state level authorities over election protocols have often accepted financial support from the equipment vendors<sup>11</sup> and have also been seen at times to act under the influence of partisanship, appearing to elevate outcomes over fairness of process.<sup>12</sup> Such systemic conflicts of interest do little to enhance the integrity or credibility of the vote counting system.

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Associated Press, Oct. 13, 2004, reprinted at <http://aolsvc.news.aol.com/elections/article.adp?id=20041013122209990005&ccc=6&cid=946>. The specific methodologies and protocols employed are detailed on the websites for Mitofsky International ([www.mitofskyinternational.com](http://www.mitofskyinternational.com)), Edison Media Research ([www.edisonresearch.com](http://www.edisonresearch.com)), and the National Election Pool ([www.exit-poll.net](http://www.exit-poll.net)).

<sup>9</sup> See, e.g., Smyth, J., *Cleveland Plain Dealer*, August 28, 2003, reprinted at: <http://www.commondreams.org/headlines03/0828-08.htm>; see also <http://blogs.salon.com/0002255/>.

<sup>10</sup> See Zeller, T., “Ready or Not, Electronic Voting Goes National,” *The New York Times*, Sept. 19, 2004 (reprinted at <http://aolsvc.news.aol.com/elections/article.adp?id=20040918145609990001&cid=842>).

<sup>11</sup> See “On the Voting Machine Makers’ Tab,” *The New York Times*, Sept. 12, 2004, Editorial Page.

<sup>12</sup> See, e.g., Welsh-Huggins, A. “The Next Katherine Harris?” Associated Press Report Oct. 27, 2004, reprinted at <http://aolsvc.news.aol.com/news/article.adp?id=20041027161309990012> (detailing actions taken by Ohio Secretary of State J. Kenneth Blackwell).

Computer experts have documented the susceptibility of both the recording and tabulating equipment to undetected errors, hacking, and deliberate fraud.<sup>13</sup> A substantial component of the system (DREs, which are responsible for recording approximately 30% of the vote) generates no paper record and is effectively immune to meaningful recount. Central tabulators responsible for compiling over 50% of the vote employ an operating system that has been demonstrated to be vulnerable to entry and manipulation through a standard laptop PC.<sup>14</sup> In spite of these vulnerabilities of the counting system, few if any questions about the accuracy of the numbers it produced were raised on election night.<sup>15</sup>

### **Election Night 2004: The Exit Poll/Votecount Differential**

On Election Night 2004, the exit polls and the vote counting equipment generated results that differed significantly. In the early morning of November 3, 2004, a CNN.com website screenshot entitled “U.S. PRESIDENT/NATIONAL/EXIT POLL” posted national exit poll results updated to 12:23 A.M., broken down by gender as well as a variety of other categories.<sup>16</sup> The time of the update indicates that these results comprised substantially the full set of respondents polled on Election Day, but were free

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<sup>13</sup> See, e.g., Rubin, A., “An Insider’s View of Vote Vulnerability,” *Baltimore Sun*, March 10, 2004 (reprinted at [www.commondreams.org/views04/0310-02.htm](http://www.commondreams.org/views04/0310-02.htm)); Levy, S., “Black Box Voting Blues,” *Newsweek*, Nov. 3, 2004 (reprinted at <http://msnbc.msn.com/id/3339650/>)

<sup>14</sup> The GEMS system, employed by Diebold in central tabulators serving about half the venues, is particularly susceptible to entry and manipulation (hacking or preprogramming) as was dramatically demonstrated on national television (CNBC: “Topic A with Tina Brown”) when critic Bev Harris led Howard Dean through the necessary steps in less than two minutes (see Hartmann, T., “Evidence Mounts That the Vote May Have Been Hacked,” at <http://www.commondreams.org/headlines04/1106-30.htm>).

<sup>15</sup> Such unquestioning acceptance may be portrayed in a positive light. As Warren Mitofsky himself has said: “In a democracy, it’s the orderly transfer of power that keeps the democracy accepting the results of elections. If it drags on too long, there’s always a suspicion of fraud.” The perils of unquestioning acceptance of what may, given the vulnerabilities of our vote counting system, be falsified results should, however, be self-evident.

<sup>16</sup> The time-stamped screenshot was printed out by Simon at 1:29 A.M. on Nov. 3, 2004, and is attached for reference as Appendix A. The posting time of 1:25 A.M. may be seen faintly on the top banner. The data derived from the CNN screenshots printed by Simon for the individual states may also be referenced at <http://www.scoop.co.nz/mason/stories/HL0411/S00142.htm>.

from the effects of a subsequent input of tabulated data used to bring about ultimate congruence between the exit poll and vote count results.<sup>17</sup>

The CNN posting indicates the number of respondents (13,047), the gender breakdown of the sample (male 46%, female 54%), and the candidate preferences by gender (males: 52% Bush, 47% Kerry; females: 45% Bush, 54% Kerry). For the national exit poll taken as a whole, therefore, the result was 48.2% Bush, 50.8% Kerry.<sup>18</sup> The vote counting equipment produced a markedly different result: 50.9% Bush, 48.1% Kerry.<sup>19</sup> The differential between the two counts, which were virtually mirror images of each other, was 5.4% overall (see Chart 1).

**Chart 1: Exit Poll vs. Popular Vote Comparison (National)**

	<b>Bush %</b>	<b>Kerry %</b>	<b>Bush Margin%</b>
<b>National Exit</b>	48.2%	50.8%	-2.6%
<b>Popular Vote Count</b>	50.9%	48.1%	2.8%
<b>Difference</b>	2.7%	-2.7%	5.4%

The reaction of Election Night analysts interpreting this differential was immediately to query what had “gone wrong” with the exit polls. This was a curious approach both in light of standard accounting practice, which compels independent examination of *both* sets of numbers that are found to be in conflict, and in light of much-voiced pre-election concerns about the accuracy and security of the computerized vote counting systems. We offer an alternate

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<sup>17</sup> This practice is referenced in “Methods Statement: National Election Pool Exit Polls Nov. 2, 2004,” at <http://www.exit-poll.net>.

<sup>18</sup> The totals for the full sample are computed by combining the candidate preferences of male and female respondents: Bush = [(males)46% x 52%] + [(females)54% x 45%] = 48.2%; Kerry = [(males)46% x 47%] + [(females)54% x 54%] = 50.8%. Alternatively, if Kerry’s exit poll share is minimized by assuming maximum female and minimal male shares subject to rounding (to zero decimals), whole integer numbers of voters, minimal Nader votes, and minimal gender vote shares subject to rounding, Kerry would get at least 50.22% of the vote. The reported actual Kerry vote of 48.1% is still far outside of the 95% confidence interval of + 1.1% and has just a one in 10,256 chance of occurrence (see analogous calculations for a Kerry exit poll result of 50.8% in text). Full-sample totals can also be checked by cross-multiplying any crosstab.

<sup>19</sup> Approximately 1% of the total vote went to minor candidates. Therefore, a vote percentage of 49.54% rather than 50.0% constitutes a winning margin for either Bush or Kerry. It is important to bear this in mind in reading the analysis below.

approach to the conflicting data, based on fundamental statistical and accounting principles.

### Statistical Analysis of Exit Poll Results

Steven F. Freeman of the University of Pennsylvania has analyzed Election 2004 exit poll results for battleground states,<sup>20</sup> and has drawn certain conclusions regarding the significant disparities between exit poll results and vote counts for several critical states. In particular, the odds against the disparities in Ohio, Florida, and Pennsylvania occurring together are computed at 662,000-to-one, or a virtual statistical impossibility that they could have been due to chance or random error. Receiving somewhat less emphasis is the overall pattern of disparity in the state polls—again with the vote counts turning in Bush’s favor, though less dramatically in the non-battleground states, as will be discussed below. The national popular vote is not addressed in that paper, but the same statistical principles are applicable, and will be employed in this analysis.

While the individual state samples totaled 73,678 reported respondents,<sup>21</sup> a national sub-sampling was undertaken by Edison/Mitofsky, which comprised 13,047 reported respondents, chosen as a representative random sample of the nation as a whole. This sample was drawn from 250 targeted polling places and from 500 individual telephone interviews with absentee and early voters.<sup>22</sup>

What is remarkable about this national sample of 13,047 is its size. When compared with more familiar pre-election poll samples of about 2000 - 2200 respondents, it is approximately six times as large. Such augmentation of sample size reduces a poll’s margin of error (MOE) from the  $\pm 3\%$  to which we have become accustomed, down to  $\pm 1.1\%$ .<sup>23</sup>

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<sup>20</sup> Freeman, S., “Was the 2004 Presidential Election Honest? An Examination of Uncorrected Exit Poll Data,” Working Paper #04-10, rev. Nov. 23, 2004; <http://www.buzzflash.com/alerts/04/11/Expldiscrv00oPt1.pdf>.

<sup>21</sup> For the 47 states and District of Columbia for which data was captured by Simon, see: <http://www.scoop.co.nz/mason/stories/HL0411/S00142.htm>.

<sup>22</sup> See “Methods Statement: National Election Pool Exit Polls: National/Regional Exit Poll,” available from the National Election Pool in .pdf format at [www.exit-poll.net/index.html](http://www.exit-poll.net/index.html).

<sup>23</sup> *Ibid*, p. 2, Table. Calculation of the margin of error may be checked as follows:

Calculate the standard error of a random sample using the formula  $\sqrt{\frac{p(1-p)}{N}}$  = 0.00437, where p = Kerry percentage of the vote (0.481) and N = the sample size

The  $\pm 1.1\%$  MOE tells us that, barring specific flaws in the design or administration of the poll and in the absence of significant mistabulation of the votecount itself, the exit poll result for the selected candidate will fall within  $\pm 1.1\%$  of his votecount 95% of the time. In this case it tells us that we can be 95% certain that Kerry's popular vote percentage would fall in the range 49.7% to 51.9%; that is, it would fall outside that range only once in 20 times. Kerry's reported votecount of 48.1% falls dramatically outside this range.<sup>24</sup>

To carry our analysis further, we can employ a normal distribution curve (see Figure 1) to determine—again assuming proper poll methodology and an accurate and honest popular vote count—that the probability that Kerry would have received his reported popular vote total of 48.1%, or less is one in 959,000—a virtual statistical impossibility.<sup>25</sup>

### The Popular Vote Winner

We can proceed one helpful step further and calculate the likelihood, based on the exit poll results, that Kerry would receive more popular votes than Bush. The break-even point would be 59,024,629 votes, or 49.54% of the total.<sup>26</sup> This percentage lies, significantly, outside the MOE of the national exit poll and in fact we find that Kerry would receive fewer votes than Bush only 1.3% of the time. Put another way—given the exit poll results, proper poll methodology, and

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(13,047). The fact that an exit poll is a cluster sample, grouping respondents by precinct, rather than a fully homogenized random sample of the target venue, increases the standard error by 30% to 0.00568 (see Merkle, D. and Edelman, M. "A Review of the 1996 Voter News Service Exit Polls from a Total Survey Error Perspective," in *Election Polls, the News Media and Democracy*, ed. P.J. Lavrakas, M.W. Traugott, New York: Chatham House, pp. 68 - 72). Ninety-five percent of the time, a result predicted on the basis of a random sample will be within 1.96 standard errors, or  $\pm 0.011$  (1.1%) for a sample of this size.

<sup>24</sup> It is dramatic because a 2.7% "miss" at these levels of precision is extremely unlikely to occur. The statistician's measure of such likelihood is known as a "standard deviation." A result which is off, as in this case, by 4.7 standard deviations is without question "dramatic:" the odds against its occurrence are 959,336 to one (see text below).

<sup>25</sup> Probability of a 48.1% vote share assuming an exit poll vote share of 50.8%:  
 $P(0.481) = 1 - \text{NORMDIST}(0.481, 0.508, 0.005686, \text{True}) = 0.0000010424$  (where NORMDIST is an Excel spreadsheet function that gives the probability of obtaining 0.481 for a normal distribution with a mean of 0.508 and a standard deviation of 0.005686).  $1/0.0000010424 = 959,336$ .

<sup>26</sup> Based on final election numbers from the *Washington Post*, Nov. 24, 2004.

an accurate and fair voting process—Kerry would be the popular vote winner of Election 2004 98.7% of the time.

### **Is Something Wrong with the Exit Poll Results?**

The clear implication of our analysis is that neither chance nor random error is responsible for the significant incongruence of exit poll and tabulated vote results, and that we must look either to significant failings in the exit poll design and/or administration or to equally significant failings in the accuracy and/or fairness of the voting process itself to explain the results. Given the dramatic implications of our analysis, we of course must consider carefully any argument that has been put forward suggesting that the exit polls failed as an accurate measure of voter intent. We examine the two least implausible hypotheses that have been put forward.

The first deals with the proportion of respondents by gender. The composition of the national sample by gender was 46% male, 54% female, which prompted a claim that females were over-represented, skewing the results towards Kerry. While it is not proven that this is in fact the case, if it is taken as stipulated and the sample is reweighted to reflect a “normal” gender breakdown of 52% female, 48% male, the effect is to increase Bush’s exit poll percentage by 0.2% to 48.4% and decrease Kerry’s to 50.6%. The effect on the bottom line is minimal: Kerry would be the popular vote victor 96.9% of the time.<sup>27</sup>

The second hypothesis put forward is the “reluctant Bush responder” hypothesis. It suggests that Bush voters were for some reason less willing to fill out an exit poll questionnaire, and therefore were undercounted in the poll results. If such a phenomenon could be proven, it would be a source of significant skewing and effectively invalidate the polls. The proponents of this hypothesis, however, have yet to offer any supportive evidence for their theory.<sup>28</sup> The hypothesis also does not explain the nonuniformity of the pattern

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<sup>27</sup> For reference, even a clearly “male-skewed” 50% male, 50% female sample would have resulted in a Kerry victory 93.5% of the time.

<sup>28</sup> There is some intriguing evidence to the contrary, drawn from an analysis performed by William Kaminsky, a graduate student at MIT. Kaminsky finds that in 22 of 23 states that break down their voter registrations by Party ID the ratio of registered Republicans to registered Democrats in the final, adjusted exit poll was larger than the ratio of registered Republicans to registered Democrats on the official registration rolls. In other words, the adjustments performed on the exit polls in order to get them to agree with the official tallies would, if valid, require Republicans to have won the get-out-the-vote battle *in essentially every state*.

We find this requirement implausible, and indeed observational evidence pointed to just the opposite: massive new voter turnout, which virtually always cuts in favor of the

of state-by-state disparities.<sup>29</sup> In fact, one could equally well imagine that a “reluctant Kerry responder” phenomenon was at work, and that the exit polls systematically underrepresented Kerry’s vote.<sup>30</sup>

## Conclusion

In light of the history of exit polling and the particular care that was taken to achieve an unprecedented degree of accuracy in the exit polls for Election 2004, there is little to suggest significant flaws in the design or administration of the official exit polls. Until supportive evidence can be presented for any hypothesis to the contrary, it must be concluded that the exit polls, including the national mega-sample with its  $\pm 1.1\%$  margin of error, present us with an accurate measure of the intent of the voters in the presidential election of 2004.

According to this measure, an honest and fair voting process would have been more likely than not—at least 95% likely, in fact—to have determined John Kerry to be the national popular vote winner of Election 2004.<sup>31</sup> Should ongoing

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challenger; huge lines in Democratic precincts; unadjusted exit poll data showing *greater* Democratic turnout; etc. Exit polls appropriately stratified to official Party ID percentages, which would effectively neutralize any suspected “reluctant Bush responder” phenomenon by including the expected proportions of Republican and Democratic voters, would on the basis of Kaminsky’s analysis have yielded results at least as favorable to Kerry as those upon which we have relied in our calculations.

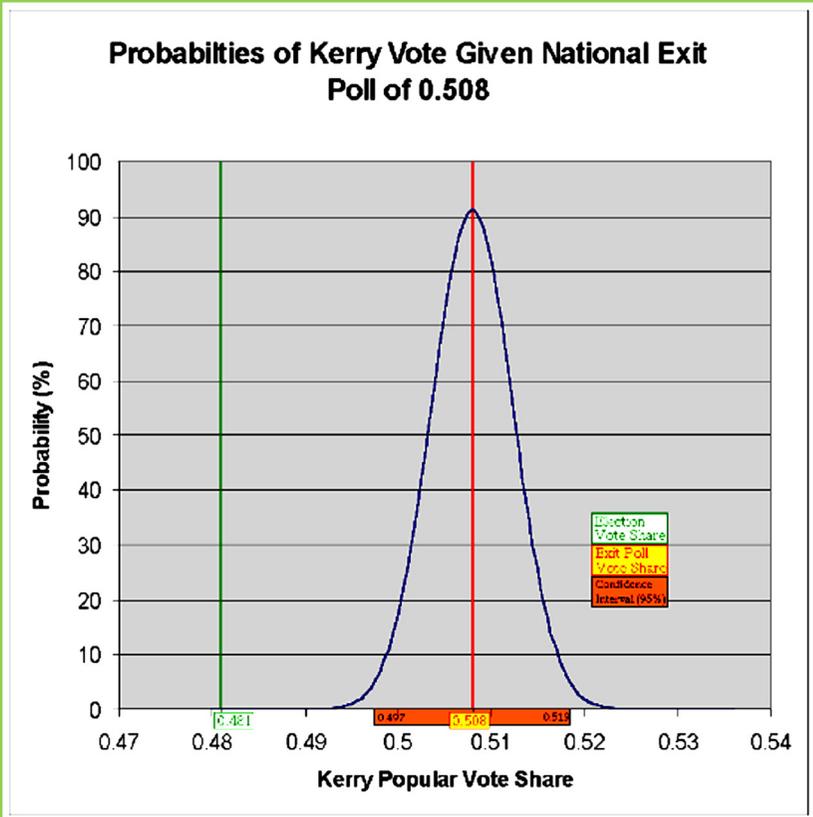
<sup>29</sup> A complete analysis of all 45 states and the District of Columbia for which comparable exit poll data is available shows that four out of the 11 battleground states had exit poll/vote count disparities that were outside of a standard 5% (one-tail) margin of error, whereas this was the case for only *one* of the 35 non-battleground states. Moreover, all of these statistically significant disparities were in favor of Bush. This data is at odds with claims of “systemic” pro-Kerry exit poll skew. See Baiman, R. Dec. 19, 2004 at: <http://www.freepress.org/departments/display/19/2004/997> (some figures have been updated by the author to reflect more recent data). It is of course more than a little implausible that Bush voters would be reluctant to respond only in purple (i.e., swing) states (the logical targets for manipulation) but not in either red or blue states.

<sup>30</sup> It is by no means self-evident that either candidate’s supporters were systemically more likely to be intimidating or more easily intimidated. While it might be more reasonably argued that voters finding themselves in a dwarfed minority in their communities might have been less willing to be exit poll respondents, in light of the even division of the national electorate, any such tendencies would have resulted in a wash, with no net effect on the validity of the national exit poll. We would of course welcome the release by Edison/Mitofsky and/or the National Election Pool of the data that would facilitate further analysis of these and other factors.

<sup>31</sup> It should be clear that more is at stake than the presidency itself. Use of computerized vote counting will only increase, as mandated by law. Vote counting is the bedrock protocol of a democracy and meaningful reform of a broken counting system is

or new investigations continue to produce evidence that, to an extent determinative of the electoral college outcome, votes have not been counted accurately and honestly, the re-examined popular vote outcome may well be deemed relevant to the question of what remedies are warranted.

Figure 1:



dependent on an expression of public will ultimately exercised *at the ballot box* and fairly, accurately, and honestly tabulated. If the system has broken down and is no longer counting accurately and honestly, there is no effective democratic mechanism to bring pressure upon a governing majority to reform a vote counting *status quo* that is seen to work in its favor. This is, as may be seen, a potentially crippling catch-22 for a democracy.

# Appendix A: Printout of typical exit poll cross-tabs page (#28 of 354)

CNN.com Election 2004

**CNN.com**
**ELECTION RESULTS**
AMERICA VOTES XXXX

Report 1:23 a.m. ET, November 3  
 CNN projects the Republican party will retain control of the U.S. Senate.

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U.S. PRESIDENT / NATIONAL / EXIT POLL

SEARCH FOR EXIT POLLS

President:  
 Pick state:

Senate:  
 Pick state:

Other:  
 Pick Others:

• How to read exit polls  
 • Party key

Updated: 12:23 a.m.

13,047 Respondents

VOTE BY GENDER	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
Male (48%)	52%	N/A	47%	1%
Female (54%)	45%	+2	54%	1%

VOTE BY RACE AND GENDER	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
White Men (30%)	58%	N/A	40%	1%
White Women (41%)	51%	N/A	47%	1%
Non-White Men (11%)	28%	N/A	68%	2%
Non-White Women (13%)	22%	N/A	77%	1%

VOTE BY RACE	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
White (77%)	55%	+1	44%	1%
African-American (11%)	10%	+1	90%	1%
Latino (9%)	41%	+6	56%	3%
Asian (2%)	39%	-2	61%	-
Other (2%)	38%	N/A	56%	2%

VOTE BY AGE	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
18-29 (17%)	42%	-4	56%	1%
30-44 (28%)	49%	+0	48%	2%
45-59 (30%)	47%	-2	51%	1%
60 and Older (24%)	51%	+9	48%	0%

VOTE BY AGE	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
18-64 (84%)	48%	+0	51%	1%
65 and Older (16%)	50%	+3	50%	0%

VOTE BY INCOME	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
Under \$15,000 (8%)	34%	N/A	65%	1%
\$15-30,000 (15%)	38%	N/A	60%	1%
\$30-50,000 (22%)	46%	N/A	53%	1%
\$50-75,000 (23%)	53%	N/A	46%	1%
\$75-100,000 (14%)	51%	N/A	45%	0%
\$100-150,000 (11%)	53%	N/A	44%	2%
\$150-200,000 (4%)	55%	N/A	45%	-
\$200,000 or More (3%)	59%	N/A	39%	2%

VOTE BY INCOME	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
Less Than \$50,000 (46%)	41%	N/A	58%	1%
\$50,000 or More (50%)	53%	N/A	46%	1%

VOTE BY INCOME	2004	2000	2004	2004
			BUSH	KERRY
<b>TOTAL</b>	2004	2000	2004	2004
Less Than \$100,000 (82%)	46%	N/A	53%	1%
\$100,000 or More (18%)	50%	N/A	43%	2%

## STUDY II.

# Landslide Denied: Exit Polls vs. Vote Count 2006

## Demographic Validity of the National Exit Poll and the Corruption of the Official Vote Count

Jonathan Simon, JD, and Bruce O'Dell<sup>1</sup>  
Election Defense Alliance

### Pre-Election Concern, Election Day Relief, Alarming Reality

There was an unprecedented level of concern approaching the 2006 Election (“E2006”) about the vulnerability of the vote counting process to manipulation. With questions about the integrity of the 2000, 2002 and 2004 elections remaining unresolved, with e-voting having proliferated nationwide, and with incidents occurring with regularity through 2005 and 2006, the alarm spread from computer experts to the media and the public at large. It would be fair to say that America approached E2006 with held breath.

For many observers, the results on Election Day permitted a great sigh of relief—not because control of Congress shifted from Republicans to Democrats, but because it appeared that the public will had been translated more or less accurately into electoral results, not thwarted as some had feared. There was a relieved rush to conclude that the vote counting process had been fair and the concerns of election integrity proponents overblown.

Unfortunately, the evidence forces us to a very different and disturbing conclusion: there was gross votecount manipulation and it had a great impact on

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<sup>1</sup> Jonathan Simon, JD ([http://www.electiondefensealliance.org/jonathan\\_simon](http://www.electiondefensealliance.org/jonathan_simon)) is Co-founder of Election Defense Alliance.

Bruce O'Dell ([http://www.electiondefensealliance.org/bruce\\_odell](http://www.electiondefensealliance.org/bruce_odell)) is EDA Data Analysis Coordinator.

the results of E2006, significantly decreasing the magnitude of what would have been, accurately tabulated, a landslide of epic proportions. Because much of this manipulation appears to have been computer-based, and therefore invisible to the legions of at-the-poll observers, the public was informed of the usual “isolated incidents and glitches” but remains unaware of the far greater story: The electoral machinery and vote counting systems of the United States did not honestly and accurately translate the public will and certainly cannot be counted on to do so in the future.

### **The Evidentiary Basis**

Our analysis of the distortions introduced into the E2006 vote count relies heavily on the official exit polls once again undertaken by Edison Media Research and Mitofsky International (“Edison/Mitofsky”)<sup>2</sup> on behalf of a consortium of major media outlets known as the National Election Pool (NEP). In presenting exit poll-based evidence of vote count corruption, we are all too aware of the campaign that has been waged to discredit the reliability of exit polls as a measure of voter intent.

***Our analysis is not, however, based on a broad assumption of exit poll reliability. Rather we maintain that the national exit poll for E2006 contains within it specific questions that serve as intrinsic and objective yardsticks by which the representative validity of the poll’s sample can be established, from which our conclusions flow directly.***

For the purposes of this analysis our primary attention is directed to the exit poll in which respondents were asked for whom they cast their vote for the House of Representatives.<sup>3</sup> Although only four House races (in single-district states) were polled as individual races, an additional nationwide sample of more than 10,000 voters was drawn,<sup>4</sup> the results representing the aggregate vote for the House in

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<sup>2</sup> Warren Mitofsky, the inventor of exit polling, died suddenly on September 1, 2006, of an apparent aneurysm, while fine tuning the exit polling system to be used by the National Election Pool in E2006. His successors at Edison/Mitofsky were, if anything, less cooperative in sharing information about their operation.

<sup>3</sup> Edison/Mitofsky exit polls for the Senate races also present alarming disparities and will be treated in a separate paper. The special significance of the House vote is that, unlike the Senate vote, it offers a nationwide aggregate view.

<sup>4</sup> The sample size was roughly equal to that used to measure the national popular vote in presidential elections. At-precinct interviews were supplemented by phone interviews where needed to sample early and absentee voters.

E2006. The sample was weighted according to a variety of demographics prior to public posting, and had a margin of error of +/- 1%.<sup>5</sup>

When we compare the results of this national exit poll with the total vote count for all House races we find that once again, as in the 2004 Election (“E2004”), there is a very significant exit poll-votecount disparity. **The exit poll indicates a Democratic victory margin nearly 4%, or 3 million votes, greater than the margin recorded by the vote counting machinery.** This is far outside the margin of error of the poll and has less than a one in 10,000 likelihood of occurring as a matter of chance.

### **The Exit Polls and The Votecount**

In E2004 the only nontrivial argument against the validity of the exit polls—other than the mere assumption that the vote counts *must* be correct—turned out to be the hypothesis, never supported by evidence, that Republicans had been more reluctant to respond and that therefore Democrats were “oversampled.” And now, in E2006, the claim has once again been made that the Exit Polls were “off” because Democrats were oversampled.<sup>6</sup> Indeed this claim of sampling *bias* is by now accepted with something of a “so what else is new?” shrug. The 2006 Exit Poll, however, contains *intrinsic yardsticks* that

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<sup>5</sup> We note with interest and raised brows that the NEP is now giving the MOE for their national sample as +/-3% (<http://www.exit-poll.net/faq.html#a15>). This is rather curious, as their published Methods Statement in 2004 assigns to a sample of the same size and mode of sampling the expected MOE of +/-1% (see Appendix 2 for both NEP Statements). Perhaps the NEP intends its new methodology statement to apply to its anticipated effort in 2008 and is planning to reduce the national sample size by 75% for that election; we hope not. It of course makes no sense, as applied to E2004 or E2006, that state polls in the 2000-responder range should yield a MOE of +/-4%, as stated, while a national poll of more than *five times* that sample size should come in at +/-3%. It would certainly be useful in quelling any controversy that has arisen or might arise from exit poll-votecount disparities far outside the poll’s MOE, but it is, to our knowledge, not the way that statistics and mathematics work.

<sup>6</sup> See for example David Bauder, AP, in a November 8 article at <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/08/AR2006110800403.html>. Oddly enough, “oversampling” of Democrats has become a chronic ailment of exit polls since the proliferation of e-voting, no matter how diligently the nonpartisan collection of experts at the peak of their profession strives to prevent it. Of course the weighting process itself is undertaken to bring the sample into close conformity with the known and estimated characteristics of the electorate, including partisanship; so the fact that more of a given party’s adherents were actually sampled, while it would be reflected in the unpublished raw data, would not in fact bias or affect the validity of the published *weighted* poll. *That is the whole point of weighting*, in light of which the hand-wringing about Democratic oversampling strikes us as misunderstanding at best, and quite possibly intended misdirection.

directly refute this familiar and convenient claim. But before turning to the yardstick questions themselves, we need to clarify certain aspects of exit polling data presentation that have often proven confusing.

Any informed discussion of exit polling must distinguish among three separate categories of data:

- 1) **“Raw” data**, which comprises the actual responses to the questionnaires simply tallied up; this data is never publicly released and, in any case, makes no claim to accurately represent the electorate and cannot be usefully compared with votecounts.
- 2) **“Weighted” data**, in which the raw data has been weighted or stratified on the basis of numerous demographic and voting pattern variables to reflect with great accuracy the composition and characteristics of the electorate.
- 3) **“Forced” or “Adjusted” data**, in which the pollster *overrides* previous weighting in order to make the "Who did you vote for?" result in a given race match the votecount for that race, however it distorts the demographics of the sample (that's why they call it "forcing").

Because the NEP envisions the post-election purpose of its exit polls as being limited to facilitating academic dissection of the election's dynamics and demographics (e.g., “How did the 18-25 age group vote?” or “How did voters especially concerned with the economy vote?”), the NEP methodology calls for “correcting” or “adjusting” its exit polls to congruence with the actual vote percentages after the polls close and actual returns become available. *Exit polls are “corrected” on the ironclad assumption that the votecounts are valid.* This becomes the supreme truth, relative to which all else is measured, and therefore it is assumed that polls that match these votecounts will present the most accurate information about the demographics and voting patterns of the electorate. A *distorted* electorate in the adjusted poll is therefore a powerful indicator of an invalid votecount.

We examined both “weighted” and “adjusted” exit polls of nationwide vote for the House of Representatives published by the NEP. On Election Night, November 7, 2006 at 7:07 p.m., CNN.com posted a national exit poll that was demographically weighted but not yet adjusted to congruence with the votecounts.<sup>7</sup> We call this the **Weighted National Poll**. At various intervals over

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<sup>7</sup> The 7:07 p.m. poll reported a 10,207 sample size and, in accordance with NEP methodology, the raw data had been weighted to closely match the demographics of the electorate.

the next 18 hours, as polls closed and official tabulations became available, the results presented in the Weighted National Poll were progressively “corrected” to match the official vote totals, culminating in a fully adjusted national exit poll posted on CNN.com at 1 p.m. November 8, 2006. We call this the **Adjusted National Poll**. We will make reference to both polls in the analysis that follows.

The 2006 national vote for the House, as captured by the Weighted National Poll, was 55.0% Democratic and 43.5% Republican—an 11.5% Democratic margin. By 1:00 p.m. on November 8, the Adjusted National Poll reported the overall vote for the House as 52.6% Democratic and 45.0% Republican, just a 7.6% margin.<sup>8</sup> This 7.6% Democratic margin of course matched the tabulated vote count but was 3.9% smaller than that recorded by the Weighted National Poll the night before. *This was a net difference of 3 million votes fewer for the Democrats.*

### **Did the 2006 Exit Poll Oversample Democrats? Cross-tabs Answer this Question**

The national exit poll administered by Edison/Mitofsky for the NEP is not, as some may imagine, a simple “Who did you vote for?” questionnaire. It poses some 40 to 50 additional questions pertaining to demographic, political preference, and state-of-mind variables. Voters are asked, for example, about such characteristics as race, gender, income, age, and also about such things as church attendance, party identification, ideology, approval of various public figures, importance of various issues to their vote, and when they made up their minds about whom to vote for.

When the poll is posted, these characteristics are presented in a format, known as “cross-tabs,” in which the voting choice of respondents in each subgroup is shown. For example, respondents were asked whether they thought the United States “is going in the right direction.” In the Weighted National Poll, the cross-tab for this characteristic (see below) shows us that 40% said Yes and 56% said

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<sup>8</sup> Analysts noticing the substantial increase in “respondents” between the Weighted (10,207) and Adjusted (13,251) National Polls may understandably but erroneously conclude that the shift between the two polls is the result of a late influx of Republican-leaning respondents. This is not the way it works. Since these are both weighted polls, each is in effect “tuned” to a profile of the electorate assumed to be valid—the Weighted National Poll to a set of established demographic variables and the Adjusted National Poll to the vote count once it is tabulated. The published number of respondents is *irrelevant* to this process and has significance only as a guide to the poll’s margin of error. 10,000+ respondents is a *huge* sample (cf. the 500 – 1500 range of most tracking polls), and obviously an ample basis on which to perform the demographic weighting manifest in the Weighted National Poll.

No; and further that, of the 40% subgroup who said Yes, 21% voted Democrat and 78% voted Republican for House of Representatives, while, of the 56% who said No, 80% voted Democrat and 18% voted Republican. We also see that this question is quite highly correlated with voting preference, with fully four-fifths of the “pessimists” voting Democratic.

IS U.S. GOING IN RIGHT DIRECTION?		
TOTAL	Democrat	Republican
Yes (40%)	21%	78%
No (56%)	80%	18%

Cross-tabs vary greatly in the degree to which the characteristic is correlated with voting preference. The more strongly correlated, the more important the cross-tab becomes in assessing the poll’s validity as an indicator of the vote.

Prior to public posting the exit poll data is weighted according to a *variety* of demographics, in such a way that the resulting cross-tabs closely mirror the expected, independently measurable characteristics of the electorate as a whole. The cross-tabs, in turn, tell us about the sample, giving us detailed information about its composition and representativeness. This information is of critical importance to our analysis because among the many questions asked of respondents there are several that enable us to tell whether the sample is valid or *politically biased* in one direction or another. These are the “intrinsic yardsticks” to which we have made reference.

Among the most salient yardstick questions were the following:

- Job Approval of President Bush
- Job Approval of Congress
- Vote for President in 2004

With respect to each of these yardsticks the composition of the sample can be compared to measures taken of the voting population as a whole, giving us a very good indication of the validity of the sample. Examining these cross-tabs for the Weighted National Poll—the 7:07 p.m. poll that was written off by the media as a “typical oversampling of Democrats”—this is what we found:

- Approval of President Bush: 42%
- Approval of Congress: 36%
- Vote for President in 2004: Bush 47%, Kerry 45%

When we compare these numbers with what we know about the electorate as a whole going into E2006, we can see at once that the poll that told us that the Democratic margin was 3 million votes greater than the computers toted up was not by any stretch of the imagination an oversampling of Democrats. Let's take each yardstick in turn.

### Presidential Approval Rating

We can compare the 42% approval of President Bush in the Weighted National Poll with any or all of the host of tracking polls measuring this critical political variable in the weeks and days leading up to the election. It is important when comparing approval ratings to make sure that we compare apples with apples, since the question can be posed in different ways leading to predictably different results. The principal formats of the approval measure are either simply "Do you approve or disapprove. . .?" or "Do you strongly approve, somewhat approve, somewhat disapprove, or strongly disapprove. . .?" We can call these the *two-point* and *four-point* formats respectively. By repeatedly posing the question in both formats on the same days, it has been determined that the four-point format consistently yields an approval rating 3-4% higher than the two-point format.<sup>9</sup>

Bearing this in mind and comparing the Weighted National Poll respondents' approval of President Bush with that registered by the electorate going into the election, we find very close parity. PollingReport.com catalogues 33 national polls of Presidential approval taken between October 1 and Election Day using the two-point format, with an average (mean) approval rating of 37.6%.<sup>10</sup> This translates to a 41% approval rating in the four-point format used for the Weighted National Poll. A direct comparison is also possible with the Rasmussen tracking poll, which unlike the other tracking polls uses the four-point format. The Rasmussen approval rating for October 2006 is also 41%, with 57% disapproving.<sup>11</sup> Thus, the 42% approval of President Bush in the Weighted National Poll matches the figure established for the electorate as a whole going

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<sup>9</sup> See [http://www.rasmussenreports.com/public\\_content/politics/polling\\_methodology\\_job\\_approval\\_ratings](http://www.rasmussenreports.com/public_content/politics/polling_methodology_job_approval_ratings). As Rasmussen notes, the 3-4% upwards adjustment in the four-point format impounds the virtual elimination of the "Not Sure" response obtained with greater frequency in the two-point format.

<sup>10</sup> See <http://www.pollingreport.com/BushJob.htm>. Typical of the national polls included are Gallup, AP-Ipsos, Newsweek, Fox/Opinion Dynamics, CBS/New York Times, NBC/Wall Street Journal, and ABC/Washington Post. The median approval rating is 37.4%, indistinguishable from the mean, and there is no discernible trend up or down over the Oct. 1 – Nov. 7 period.

<sup>11</sup> See [http://www.rasmussenreports.com/public\\_content/politics/political\\_updates/president\\_bush\\_job\\_approval](http://www.rasmussenreports.com/public_content/politics/political_updates/president_bush_job_approval). The rating combines "strong" and "somewhat" approve and is the average of Rasmussen's daily tracking polls conducted throughout the month.

into the election; in fact, it is 1% “over par.” As Bush approval correlates very strongly with voting preference (see below), an oversampling of Democrats would unavoidably have been reflected in a lower rating. The rating at or above the established level thus provides the first confirmation of the validity of the Weighted National Poll.

HOW GEORGE W. BUSH IS HANDLING HIS JOB		
TOTAL	Democrat	Republican
Approve (42%)	15%	84%
Disapprove (58%)	83%	15%

### Congressional Approval Rating

As with the Presidential approval yardstick, comparison between the 36% of the Weighted National Poll sample that approved of how Congress was handling its job and the value established for the electorate in numerous tracking polls corroborates the Weighted National Poll’s validity. The mean of the 17 national polls catalogued by the PollingReport.com measuring approval of Congress between October 1 and Election Day (all employing the two-point format) was 27.5% approval.<sup>12</sup> Translating to the four-point format used for the exit poll yields a comparable approval rating of 31%, a full 5% *below* the Congressional approval given by the Weighted National Poll respondents. As with the Presidential rating, approval of what was at that point a Republican Congress correlates strongly with voting preference (see below). We would have expected an oversampling of Democrats to give a *lower* approval rating to Congress than did the electorate it was supposedly misrepresenting. Instead the Weighted National Poll yielded a significantly *higher* Congressional approval rating—indicative, if anything, of an oversampling of Republicans.

HOW CONGRESS IS HANDLING ITS JOB		
TOTAL	Democrat	Republican
Strongly Approve (5%)	29%	70%
Somewhat Approve (31%)	25%	73%
Somewhat Disapprove (32%)	62%	37%
Strongly Disapprove (30%)	81%	16%

### Vote for President in 2004

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<sup>12</sup> See <http://www.pollingreport.com/CongJob.htm>.

Edison/Mitofsky asked all respondents how they had voted in the 2004 Presidential election. The Weighted National Poll sample included 45% who said they had voted for Kerry and 47% who said they had voted for Bush (8% indicating they had not voted or voted for another candidate). This Bush margin of +2% closely approximates the +2.8% margin that Bush enjoyed in the official popular vote count for E2004.

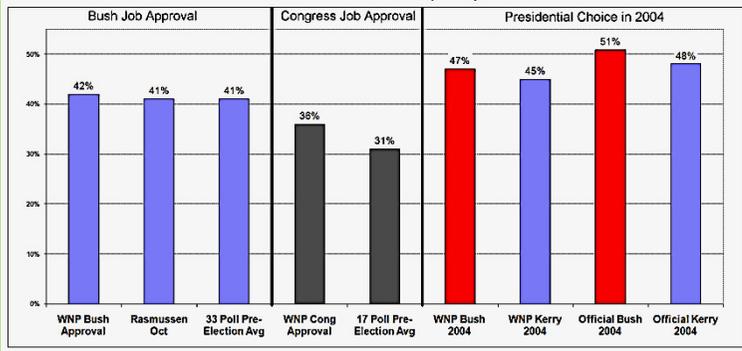
VOTE FOR PRESIDENT IN 2004		
TOTAL	Democrat	Republican
Kerry (45%)	93%	6%
Bush (47%)	17%	82%

While poll respondents have often shown some tendency to indicate they voted for the sitting president when questioned at the time of the next presidential election (i.e., four years out), Bush’s historically low approval rating, coupled with his high relevance to this off-year election, and the shorter time span since the vote in question, make such a generic “winner’s shift” singularly unlikely in E2006.

And while we present the reported 2.8% Bush margin in 2004 at face value, it will not escape notice that the distortions in vote tabulation that we establish in the current paper were also alleged in 2004, were evidenced by the 2004 exit polls, and were demonstrably achievable given the electronic voting systems deployed at that time. We note that, if upon retrospective evaluation the unadjusted 2004 exit polls prove as accurate as the 2006 exit polls appear to be, and their 2.5% margin for *Kerry* in 2004 is taken as the appropriate baseline, a correctly weighted sample in 2006 would have included even more Kerry voters and even fewer Bush voters than Edison/Mitofsky’s Weighted National Poll, with a substantial consequent up-tick in the Democratic margin beyond the 3 million votes thus far unaccounted for.

These critical comparisons between measures taken of the Weighted National Poll sample and established benchmarks are presented together in the chart immediately below.

**COMPARISON OF 2006 WEIGHTED NATIONAL POLL (WNP) TO ESTABLISHED BENCHMARKS**



There should be little question that the three yardsticks presented above conclusively refute the glib canard that the National Exit Poll disparity was due to an oversampling of Democrats. Two additional cross-tabs are, however, worthy of note in this regard: Vote by Race and Vote by Party ID.

Vote by Race

The Weighted National Poll sample, as can be seen below, is 80% White, 10% African-American, and 8% Latino in composition, with Whites splitting their vote evenly between the parties while Latinos and particularly Blacks voted overwhelmingly Democratic.

VOTE BY RACE		
TOTAL	Democrat	Republican
White (80%)	49%	49%
African-American (10%)	88%	12%
Latino (8%)	72%	28%
Asian (1%)	65%	35%
Other (2%)	59%	36%

We can compare these demographics with an established measure of the electorate published by the University of Michigan Center for Political Studies. The ANES Guide to Public Opinion and Electoral Behavior is a longitudinal study of many aspects of the American electorate, including racial

composition.<sup>13</sup> The chart below presents the ANES results for the past six biennial national elections.<sup>14</sup>

	'94	'96	'98	'00	'02	'04
<b>White :</b>	78	72	74	74	75	70
<b>Black :</b>	12	14	12	13	12	16
<b>Asian :</b>	2	2	1	3	2	3
<b>Native American:</b>	3	5	3	3	2	4
<b>Hispanic :</b>	6	8	9	7	8	8
<b>Other :</b>	-	-	-	-	2	-

As can be seen by comparing the charts above, in *none* of the past six elections was the White participation as high or the Black participation as low as represented in the Weighted National Poll.<sup>15</sup> The average White proportion of the electorate was 74%, 6% below the exit poll’s representation of Whites, while the average Black proportion was 13%, 3% above the exit poll’s representation of Blacks. The relative under-representation of every strong Democratic constituency in this cross-tab, in favor of the least Democratic voting bloc, hardly jibes with the “Invalid: Oversampled Democrats” label cheerfully pasted on the Weighted National Poll.

#### Vote by Party ID

Though Vote by Party ID generally fluctuates relatively modestly from one election to the next, it is, not surprisingly, nonetheless sensitive to the dynamics of atypical turnout battles. While we will address the E2006 turnout dynamics more fully in a later section, for the present we will simply note that a

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<sup>13</sup> The American National Election Studies; see [www.electionstudies.org](http://www.electionstudies.org). Produced and distributed by the University of Michigan, Center for Political Studies; based on work supported by the National Science Foundation and a number of other sponsors.

<sup>14</sup> The full chart, dating to 1948, may be referenced at [http://www.electionstudies.org/nesguide/topstable/tab1a\\_3.htm](http://www.electionstudies.org/nesguide/topstable/tab1a_3.htm).

<sup>15</sup> Asian and Native American voters, also strong Democratic constituencies, likewise seem to be significantly under-represented in the Weighted National Poll. The ANES results for 2006 are due to be published later this year. In *E2004* the Weighted National Poll was 77% White and 11% Black, as opposed to the ANES proportions of 70% and 16% respectively. It was this disproportionately White sample—supposedly short on “reluctant” Bush responders, but in reality overstocked with White voters who favored Bush by a margin of 11% and under-stocked with Black voters who favored Kerry by a margin of 80%!—that gave Kerry a 2.5% *victory* in the nationwide popular vote.

Democratic turnout romp was generally acknowledged in 2006, Republican voters having a number of late-breaking reasons for staying home.

In the Weighted National Poll, Democratic voters comprised 39% of the sample to 35% for the Republicans, as shown below.

TOTAL	Democrat	Republican
Democrat (39%)	93%	6%
Republican (35%)	9%	90%
Independent (26%)	58%	38%

Only 20 states register their voters by party so there is no direct comparison to be made to actual registration figures. But the ANES Guide once again proves useful. The chart below records party identification amongst the electorate as a whole on a seven-point scale, but the comparison is convincing.<sup>16</sup>

	'94	'96	'98	'00	'02	'04
<b>Strong Democrat :</b>	15	18	19	19	17	17
<b>Weak Democrat :</b>	19	19	18	15	17	16
<b>Independent Democrat :</b>	13	14	14	15	15	17
<b>Independent Independent:</b>	11	9	11	12	8	10
<b>Independent Republican :</b>	12	12	11	13	13	12
<b>Weak Republican :</b>	15	15	16	12	16	12
<b>Strong Republican :</b>	15	12	10	12	14	16
<b>Apolitical :</b>	1	1	2	1	1	0

In each of the past six biennial national elections through 2004, self-identified Democrats have outnumbered Republicans. The margins for 1994, 1996, 1998, 2000, 2002, and 2004 have been +4%, +10%, +11%, +10%, +4%, and +5% respectively. If Independent leaners are included, the Democratic margin increases every year, to +5%, +12%, +14%, +12%, +6%, and +10% respectively. These are very consistent numbers confirming a consistent plurality of self-identified Democratic voters from election to election.<sup>17</sup> The 4%

<sup>16</sup> The full chart, dating to 1952, may be referenced at [http://www.electionstudies.org/nesguide/toptable/tab2a\\_1.htm](http://www.electionstudies.org/nesguide/toptable/tab2a_1.htm).

<sup>17</sup> It is worth noting that among the most suspicious demographic distortions of the Adjusted National Poll in *E2004* was the Party ID cross-tab, which indicated an electorate *evenly* divided between self-identified Democrats and Republicans at 37% apiece. Not only was this supposed parity unprecedented, but it flew in the face of near-universal observational indications of a major Democratic turnout victory in 2004: not only in Ohio but nationwide, long lines and hours-long waits were recorded at inner-city and traditionally Democratic precincts, while literally no such lines were observed

Democratic plurality in the Weighted National Poll sample is seen to be at the extreme *low* end of the margins recorded since 1994, matching only the 4% Democratic margins recorded in the major *Republican* victories of 1994 and 2002. But E2006 was a major *Democratic* victory and, as will be seen, a likely *turnout landslide*.

While it would probably insult the intelligence of the media analysts who proclaimed that the E2006 Weighted National Poll was “off” because it had oversampled Democrats to even suggest the possibility that one or more of them took the 39% - 35% Democratic ID margin in the poll to be indicative of Democratic oversampling—such misinterpretation quickly spreading among, and taking on the full authority of, the Election Night punditry—it is very difficult to comprehend by what *other* measure the Election Night analysts, and all who followed their lead, might have reached that manifestly erroneous, though obviously comforting, conclusion.

**In short, there is no measure anywhere in the Weighted National Poll—in which the Democratic margin nationwide was some 3 million votes greater than tabulated by the machines—that indicates an oversampling of Democrats. Any departures from norms, trends, and expectations indicate just the opposite: a poll that likely undersampled Democratic voters and so, at 11.5%, understated the Democratic victory margin.**

### **The Adjusted National Poll: Making the Vote-Count Match**

In the wake of our primary analysis of the validity of the Weighted National Poll, consideration of the Adjusted National Poll is something of an afterthought, though it does serve to further reinforce our conclusions.

As we described earlier, in the “adjusted” or “corrected” poll the pollster overrides all previous weighting to make the “Who did you vote for?” result in a given race (or set of races) match the votecount for that race, however it distorts the demographics of the sample. In the Adjusted National Poll, which appeared the day after the election and remains posted (with a few further updates not affecting this analysis) on the CNN.com website, Edison/Mitofsky was faced with the task of matching the tabulated aggregate results for the set of House races nationwide. This translated to reducing the Democratic margin from 11.5% to 7.6% by giving less weight to the respondents who said they had voted for a Democratic candidate and more weight to the respondents who said

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and no such complaints recorded in traditionally Republican voting areas (see EIRS data at <https://voteprotect.org/index.php?display=EIRMapNation&tab=ED04>).

they had voted Republican. Of course this process, referred to as “forcing,” also affects the response to every question on the questionnaire, including the demographic and political preference questions we have been considering.

The most significant effect was upon “Vote for President in 2004.” In order to match the results of the official tally, the Adjusted National Poll was forced to depict an electorate that voted for Bush over Kerry *by a 6% margin* in 2004, more than twice the “actual” margin of 2.8%, taken charitably at face value for the purposes of this analysis.

TOTAL	Democrat	Republican
Kerry (43%)	82%	7%
Bush (49%)	15%	83%

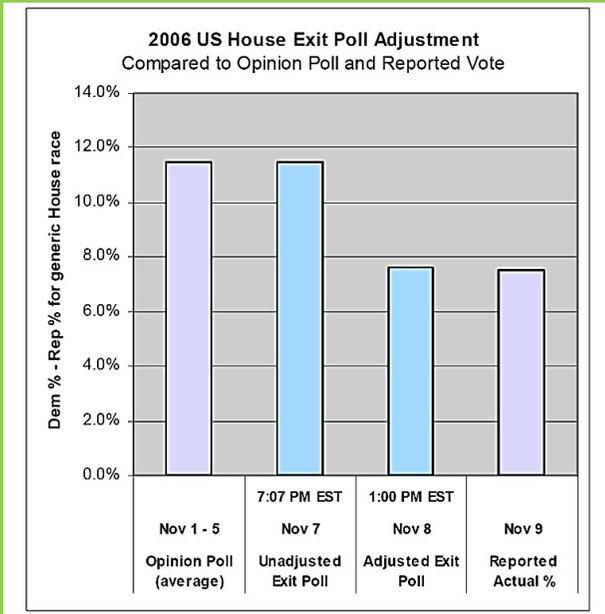
As might be expected, other yardsticks were also affected: Bush approval increases to 43%; Congressional approval to 37%; and Party ID shifts to an implausible 38% Democratic, 36% Republican.

There were, as we identified earlier, indications that the Weighted National Poll itself may have undersampled voters who cast their votes for the Democratic House candidates.<sup>18</sup> The Adjusted National Poll compounds such distortions in order to present an electorate cut to fit the official vote totals. If such an adjusted poll yields inaccurate and distorted information about the demographics and voting patterns of the electorate, then very basic logic tells us that the vote count it was forced to match is itself invalid. This of course corroborates the story told by the Weighted National Poll, as well as by the pre-election polls, as shown in the graph below.<sup>19</sup>

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<sup>18</sup> To the extent that weighting is based on prior turnout patterns, a significant shift in the turnout dynamic, as was apparent in E2006, would be one cause for this undersampling. A second and more disturbing cause: “actual” results from recent elections, which themselves have been vulnerable to and distorted by electronic mistabulation, fed into the weighting algorithms.

<sup>19</sup> The 11.5% Democratic margin in the Weighted National Poll was strictly congruent with the 11.5% average margin of the seven major national public opinion polls conducted immediately prior to the election. Indeed, this 11.5% pre-election margin was drawn down substantially by the appearance of three election-week “outlier” polls, which strangely came in at 7%, 6%, and 4% respectively. To put this in perspective, excluding these three polls, 30 of the 31 other major national polls published from the beginning of October up to the election showed the Democratic margin to be in double-digits, and the single exception came in at 9%. See [http://www.realclearpolitics.com/epolls/2006/house/us/generic\\_congressional\\_ballot-22.html](http://www.realclearpolitics.com/epolls/2006/house/us/generic_congressional_ballot-22.html).



See Appendix 1 for detailed tabular presentation of the above data.

It is also worth noting that most pre-election polls shift, in the month before the election, to a "likely-voter cutoff model" (LCVM) that excludes *entirely* any voters not highly likely (on the basis of a battery of screening questions) to cast ballots; that is, it excludes *entirely* voters with a 25% or even 50% likelihood of voting. Since these are disproportionately transients and first-time voters, the less educated and affluent, it is also a correspondingly Democratic constituency that is disproportionately excluded.

Ideally these voters should be down-weighted to their estimated probability of voting, *but that probability is not 0%*. By excluding them entirely, these pre-election polls build in a pro-Republican bias of about 2-5%, which *anomalously* in 2006 appears to have been offset by the significantly greater enthusiasm for voting on the part of the Democrats, reflected in an elevated LCVM failure rate among Republicans responding negatively or ambivalently to the battery question about their intention to vote in E2006. Dr. Steven Freeman, visiting professor at the University of Pennsylvania's Center for Organizational Dynamics, has examined this phenomenon in great detail.

Of course, one of the reasons for the recent shift to the LCVM—a methodology that pollsters will generally admit is distorted but which they maintain nonetheless "gets it right"—is that pollsters are *not* paid for methodological purity, *they are paid to get it right*. From the pollster's standpoint, getting it right is the measure of their success whether the election is honest or the fix is in. The reality is that distorted vote counts and a distorted but "successful" pre-election polling methodology wind up corroborating and validating each other, *with only the exit polls (drawn from actual voters) seeming out of step*.

## Plausible Explanations?

Since, as we have seen, the Weighted National Poll's inclusion of Democratic voters (or, better put, voters with characteristics making them likely to vote Democratic) either jibes with or falls somewhat short of established benchmarks for the electorate, there are only two possible explanations for the dramatic disparity between it and the official vote count: either Republicans unexpectedly turned out in droves and routed the Democrats in the E2006 turnout battle, or the official vote count is dramatically "off."

To our knowledge no one has contended the former. With good reason: there are a plethora of measures, including individual precinct tallies and additional polling data that we will examine in the next section, that confirm the obvious—the Democrats were the runaway winners of the 2006 Get-Out-The-Vote battle. Indeed, it is generally acknowledged that Republican voters stayed home in droves, dismayed and turned-off by the late-breaking run of scandals, bad news, and missteps.<sup>20</sup>

Hence it must be the reported nationwide vote tally which is inaccurate. Although this is, to put it mildly, an unwelcome finding, it is unfortunately consonant with the many specific incidents of vote-switching and mistabulation reported in 2006, with an apparent competitive-contest targeting pattern,<sup>21</sup> and with a host of other evidence and analysis that has emerged about electronic voting technology as deployed in the United States.

## So Why Did the Republicans *Lose*?

**It will no doubt be objected that if such substantial manipulation of the vote counts is possible, why would it stop short of bringing about a general electoral victory?** While we would naturally like to credit the heightened scrutiny engendered by the untiring efforts of election integrity groups, an awakening media, and a more informed and vigilant public; an alternative, more chilling, explanation has emerged—simply that the mechanics of manipulation (software modules, primarily; see Appendix 3) had to be deployed before late-

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<sup>20</sup> Indeed, once on-going analysis fully quantifies the extent of the Democrats' turnout victory, it will be time to recalculate upward the magnitude of the vote miscount in 2006.

<sup>21</sup> Our paper on competitive contest targeting is scheduled for publication in August 2007.

breaking pre-election developments<sup>22</sup> greatly expanded the gap that such manipulation would have been calibrated to cover.

To quantify the extraordinary effect of the various “October surprises,” we reference below the Cook Political Report National Tracking Poll’s Generic Congressional Ballot, ordinarily a rather *stable* measure:<sup>23</sup>

### GENERIC CONGRESSIONAL BALLOT (Most Likely Voters)

Date	This Poll	
Sample Size/MoE	807/3.5%	
MLV	Dem	Rep
Oct. 26-29	<b>61</b>	<b>35</b>
Oct. 19-22	57	35
Oct. 5-8	<b>50</b>	<b>41</b>
Sept. 27-30	51	35
Sept. 21-24	49	41

**Thus the Democratic margin among most likely voters increased from 9% (50% - 41%) to 26% (61% - 35%) during the month of October, an enormous 17% jump occurring *after* the vote-shifting mechanisms were, *or could be*, deployed.**

It should be noted that among the various tracking polls, there were some that did not pick up the dramatic trend reflected in the Cook poll. Indeed, Cook’s own parallel tracking poll of all *registered* voters (not screened for likelihood of turnout) found only a modest gain of 2% in the Democratic margin over the

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<sup>22</sup> The powerful impact of the succession of lurid scandals (Foley, Haggard, Sherwood, et al) is clear from the Weighted National Poll responses in which voters were asked about the importance of “corruption/ethics:” 41% responded “extremely important” and another 33% “very important,” *the highest response of all the “importance” questions*, outstripping even the importance of “terrorism.” Iraq, another source of late-breaking negatives for the GOP, also scored high on the importance scale (36% extremely, with this category breaking for the Democrats 61% -38%).

<sup>23</sup>See <http://www.cookpolitical.com/poll/ballot.php>.

same period. This is indicative of the phenomenon to which we have already made reference: what most boosted the Democrats during the month of October was an extraordinary gain in the relative *motivation and likelihood of turning out* among their voters. It supports our belief that it was primarily the exceptional turnout differential, understandably missed by exit polls calibrated to historical turnout patterns, that would have given the Democrats an even greater victory than the 11.5% reflected by the Weighted National Poll, in an honestly and accurately counted election.

## Implications

The 2006 Election gave the Democrats control of both houses of Congress, by margins of 31 seats (233 – 202) in the House and two seats (51 – 49) in the Senate. The Democrats won 20 House races and four Senate races by margins of 6% of the vote or less.<sup>24</sup> The odds are very good that the outcomes of most if not all of these races would have been reversed a month earlier, post-deployment of vote shifting mechanisms but pre-October surprises, before the resulting dramatic movement to the Democrats as reflected in the 17% Generic Ballot jump. The ballpark *sans*-October Surprise numbers: 222R – 213D in the House and 53R – 47D in the Senate.

**Absent a very Blue October, which came too late to be countered by deployment of additional vote-shifting mechanisms, we can conclude that, with the assistance of the vote-shifting mechanisms already deployed, the Republicans would almost certainly have maintained control of both houses of Congress.**

**This should be a rather sobering observation for Democrats looking ahead to their electoral future and assessing to what extent the system is broken as they contemplate the various legislative proposals for reform.<sup>25</sup>**

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<sup>24</sup> In the House: four races by 1%, four races by 2%, one race by 3%, five races by 4%, one race by 5%, five races by 6%, one race by 7%, five races by 8%, two races by 9%; in the Senate: two races by 1%, one race by 3%, one race by 6%, one race by 8%.

<sup>25</sup> If we are correct in our assessment that the limitations on vote shifting were more temporal than spatial—that is, had more to do with timing of deployment than with the potential size of the shift—then only extraordinary and unanticipated eleventh-hour pre-election surges *a la* E2006 will suffice to overcome future foul play. However, whatever quantitative limits may apply to electronic vote shifting, ***it should obviously not be necessary to enjoy super-majority support in order to eke out electoral victories.***

## Conclusion

There is a remarkable degree of consensus among computer scientists,<sup>26</sup> security professionals,<sup>27</sup> government agencies,<sup>28</sup> and independent analysts<sup>29</sup> that U.S. electronic vote tallying technology is vulnerable both to unintentional programming errors<sup>30</sup> and to deliberate manipulation—certainly by foul-play-minded insiders at voting equipment vendors, but also by other individuals with access to voting equipment hardware or software.<sup>31</sup>

We have arrived at a system of “faith-based” voting where we are simply asked to trust the integrity of the count produced by the secret-software machines that tally our votes, without effective check mechanisms. In the context of yet another election replete with reported problems with vote tallying,<sup>32</sup> the continuing mismatch between the preferences expressed by voters as captured in national exit polls and the official vote tally as reported to the public is beyond disturbing. It is a bright red flag that no one who values a democratic America can in good conscience ignore.

False elections bequeath to all Americans—right, left, and center—nothing less sinister than an illusory identity and the living of a national lie. Our biennial elections, far more than the endless parade of opinion polls, *define* America—both in terms of who occupies its seats of power and as the single snapshot that becomes the enduring national self-portrait that all Americans carry in their mental wallets for at least the biennium and more often for an era. It is also, needless to say, the portrait we send abroad.

While the reported results of the 2006 election were certainly well-received by the Democratic Party and were ballpark-consistent with public expectations of a Democratic victory, the unadjusted 2006 exit poll data indicates that what has been cast as a typical midterm setback for a struggling president in his second

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<sup>26</sup> For instance, <http://www.acm.org/usacm/weblog/index.php?cat=6>.

<sup>27</sup> See the credentials of the interdisciplinary Brennan Center Task Force membership at <http://brennancenter.org/programs/downloads/About%20the%20Task%20Force.pdf>.

<sup>28</sup> See <http://www.gao.gov/new.items/d05956.pdf>.

<sup>29</sup> See <http://www.blackboxvoting.org/BBVtsxstudy.pdf>, <http://www.blackboxvoting.org/BBVtsxstudy-supp.pdf>, and <http://www.blackboxvoting.org/BBVreport.pdf>.

<sup>30</sup> Credible reports of voting equipment malfunctions are all too common; one good starting point is <http://www.votersunite.org/info/messupsbyvendor.asp>.

<sup>31</sup> For example, <http://brennancenter.org/programs/downloads/SecurityFull7-3Reduced.pdf>.

<sup>32</sup> Election 2006 incidents at <http://www.votersunite.org/electionproblems.asp>.

term was something rather more remarkable – a landslide repudiation of historic proportions.

We believe that the demographic validity of the Weighted National Poll in 2006 is the clearest possible warning that the ever-growing catalog of reported vulnerabilities in America’s electronic vote counting systems are not only *possible* to exploit, *they are actually being exploited*. To those who would rush to find “innocent” explanations on an *ad hoc* basis for the cascade of mathematical evidence that continues to emerge, we ask what purpose is served and what comfort is given by relying on a series of implausible alibis to dispel concerns and head off effective reform?

The vulnerability is manifest; the stakes are enormous; the incentive is obvious; the evidence is strong and persistent. Any system so clearly at risk of interference and gross manipulation cannot and must not be trusted to tally the votes in any future elections.

# Appendix 1 – U.S. House Exit Poll Data

## 1. National Generic U.S. House Exit Poll summary

### US House Exit Poll 2006

Opinion Poll (average)	Unadjusted Exit Poll	Adjusted Exit Poll	Reported Actual %	Reported Actual Vote
Nov 1 - 5	Nov 7 7:07 PM EST	Nov 8 1:00 PM EST	Nov 9	Nov 9
7 polls**	Sample size 10,207	Sample size 13,251		
Total Democrat vote for US House*	55.0%	55.0%	52.7%	40,323,525
Total Republican vote for US House	43.5%	43.5%	45.0%	34,565,872
Total Other Parties vote for US House		1.5%	2.4%	1,694,392
<b>Total US House</b>				<b>76,583,789</b>
*CBSNews.com, 11/9/06 + additional sources for unopposed candidates				
Democrat - Republican spread (%)	11.5%	11.5%	7.6%	7.6%
Variance: Exit Poll - Actual [%]	<b>3.9%</b>	<b>3.9%</b>	<b>0.0%</b>	
Democrat - Republican spread (count)		8,807,136	5,820,368	5,820,368
Variance: Exit Poll - Actual (count)		2,986,768	0	
Variance from actual				
Democrat	2.3%	2.3%	-0.1%	
Republican	-1.6%	-1.6%	-0.1%	
Other	-2.2%	-0.7%	0.2%	

\*\*Fox News, CNN, USA Today/Gallup, ABC News/Wash Post, Pew Research, Newsweek, Time as reported on RealClearPolitics.com

## 2. Exit Poll Screen Captures

Exit poll screen capture files will be posted at <http://www.electiondefensealliance.org/ExitPollData> after the release of this report.

3. U.S. House – preliminary reported tallies by state as-of 11/09/2006, CBSNews.com

State	U.S. House – D	U.S. House – R	U.S. House - Other	Dem %	Rep %	Other %
AL	224,350	351,650	3,396	38.7%	60.7%	0.6%
AK	81,408	115,062	6,236	40.2%	56.8%	3.1%
AZ	478,573	576,061	72,435	42.5%	51.1%	6.4%
AR	448,058	299,496	0	59.9%	40.1%	0.0%
CA	3,549,128	2,478,884	207,821	56.9%	39.8%	3.3%
CO	727,914	571,699	70,877	53.1%	41.7%	5.2%
CT	652,025	420,995	6,087	60.4%	39.0%	0.6%
DE	196,700	291,052	20,674	38.7%	57.2%	4.1%
FL	1,496,686	2,162,353	68,197	40.2%	58.0%	1.8%
GA	798,809	1,117,086	0	41.7%	58.3%	0.0%
HI	219,588	118,075	0	65.0%	35.0%	0.0%
ID	172,530	243,062	19,401	39.7%	55.9%	4.5%
IL	1,732,380	1,381,232	13,602	55.4%	44.2%	0.4%
IN	802,751	820,569	22,128	48.8%	49.9%	1.3%
IA	489,508	519,796	17,629	47.7%	50.6%	1.7%
KS	360,356	449,548	16,213	43.6%	54.4%	2.0%
KY	596,402	608,771	39,362	47.9%	48.9%	3.2%
LA	294,100	579,514	27,028	32.7%	64.3%	3.0%
ME	344,870	161,335	22,689	65.2%	30.5%	4.3%
MD	827,674	475,065	41,292	61.6%	35.3%	3.1%
MA	792,619	197,722	76,951	74.3%	18.5%	7.2%
MI	1,793,200	1,626,459	97,334	51.0%	46.2%	2.8%
MN	1,153,624	925,500	99,493	53.0%	42.5%	4.6%
MS	251,027	295,184	35,077	43.2%	50.8%	6.0%
MO	965,390	1,031,489	54,436	47.1%	50.3%	2.7%
MT	314,998	476,062	15,494	39.1%	59.0%	1.9%
NE	257,214	329,003	0	43.9%	56.1%	0.0%
NV	286,761	259,237	26,535	50.1%	45.3%	4.6%
NH	209,424	188,774	3,777	52.1%	47.0%	0.9%
NJ	948,740	885,007	25,070	51.0%	47.6%	1.3%
NM	304,058	241,202	0	55.8%	44.2%	0.0%
NY	2,285,026	1,268,408	8,251	64.2%	35.6%	0.2%
NC	935,490	907,236	0	50.8%	49.2%	0.0%
ND	284,242	148,728	0	65.6%	34.4%	0.0%
OH	1,970,118	1,784,993	8,052	52.4%	47.4%	0.2%

State	U.S. House – D	U.S. House – R	U.S. House - Other	Dem %	Rep %	Other %
OK	372,822	517,948	14,278	41.2%	57.2%	1.6%
OR	713,441	522,846	28,446	56.4%	41.3%	2.2%
PA	2,060,969	1,705,435	48,949	54.0%	44.7%	1.3%
RI	264,101	41,753	66,176	71.0%	11.2%	17.8%
SC	466,473	592,639	13,252	43.5%	55.3%	1.2%
SD	460,946	195,736	10,470	69.1%	29.3%	1.6%
TN	860,025	797,431	54,970	50.2%	46.6%	3.2%
TX	1,783,304	2,069,491	142,391	44.6%	51.8%	3.6%
UT	234,024	282,554	31,583	42.7%	51.5%	5.8%
VT	279,170	234,442	11,110	53.2%	44.7%	2.1%
VA	810,365	1,220,073	117,870	37.7%	56.8%	5.5%
WA	802,873	498,872	6,584	61.4%	38.1%	0.5%
WV	258,438	187,895	0	57.9%	42.1%	0.0%
WI	1,001,254	836,054	15,311	54.0%	45.1%	0.8%
WY	184,454	186,394	7,465	48.8%	49.3%	2.0%
<b>Sub-total</b>	37,798,400	34,195,872	1,694,392	51.3%	46.4%	2.3%
<b>Total</b>	73,688,664					

#### 4. Estimation of votes in uncontested U.S. House races

Near complete election results were published shortly after November 7<sup>th</sup> for contested U.S. House races. Most media outlets do not publish the number of votes in uncontested House races, which can be substantial. Public opinion and exit pollsters may sample voters in districts with uncontested candidates. In order to have an accurate baseline for any measurements based on the actual U.S. House vote, it was necessary to estimate the total number of votes cast for unopposed candidates.

To estimate the number of votes in U.S. House races with unopposed candidates:

- > We identified jurisdictions, such as Florida, where uncontested candidates do not appear on the ballot at all. These races were excluded from the national aggregate U.S. House vote count.

> For every other uncontested race we looked at historical data on ballots cast for uncontested candidates for a midterm election in exactly the same district. In most cases, the same districts were uncontested in 2002.

> In a few cases, districts with uncontested races in 2006 were not uncontested in recent elections. For those districts, we used the winning margin of the candidate of the same party in a recent midterm election.

> Our overall estimate of votes in uncontested elections – 2,525,125 votes cast nationwide for unopposed Democrats and 370,000 nationwide cast for unopposed Republicans – produces an estimated national grand total that matches quite closely the grand total vote that appears to have been used to calibrate the adjusted U.S. House exit poll on November 8.

## Appendix 2 – NEP Methodology 2004 and 2007

### METHODS STATEMENT

#### NATIONAL ELECTION POOL EXIT POLLS

November 2, 2004

#### NATIONAL/REGIONAL EXIT POLL

**Edison Media Research and Mitofsky International** conducted exit polls in each state and nationally for the **National Election Pool** (ABC, AP, CBS, CNN, FOX, NBC). The polls should be referred to as a **National Election Pool** (or NEP) **Exit Poll**, conducted by **Edison/Mitofsky**. **All questionnaires were prepared by NEP.**

The National exit poll was conducted at a sample of 250 polling places among 11,719 Election Day voters representative of the United States.

In addition, 500 absentee and/or early voters in 13 states were interviewed in a pre-election telephone poll. Absentee or early voters were asked the same questions asked at the polling place on Election Day. The absentee results were combined in approximately the correct proportion with voters interviewed at the polling places. The states where absentee/early voters were interviewed for the National exit poll are: Arizona, California, Colorado, Florida, Iowa, Michigan, Nevada, New Mexico, North

Carolina, Oregon, Tennessee, Texas and Washington state. Absentee voters in these states made up 13% of the total national vote in the 2000 presidential election. Another 3% of the 2000 total vote was cast absentee in other states in 2000 and where there is no absentee/early voter telephone poll.

The polling places were selected as a stratified probability sample of each state. A subsample of the state samples was selected at the proper proportions for the National exit poll. Within each polling place an interviewer approached every  $n^{\text{th}}$  voter as he or she exited the polling place. Approximately 100 voters completed a questionnaire at each polling place. The exact number depends on voter turnout and their cooperation.

For the national tabulations used to analyze an election, respondents are weighted based upon two factors. They are: (1) the probability of selection of the precinct and the respondent within the precinct; (2) by the size and distribution of the best estimate of the vote within geographic sub-regions of the nation. The second step produces consistent estimates *at the time of the tabulation* whether from the tabulations or an estimating model used to make an estimate of the national popular vote. At other times the estimated national popular vote may differ somewhat from the national tabulations.

All samples are approximations. A measure of the approximation is called the sampling error. Sampling error is affected by the design of the sample, the characteristic being measured and the number of people who have the characteristic. If a characteristic is found in roughly the same proportions in all precincts the sampling error will be lower. If the characteristic is concentrated in a few precincts the sampling error will be larger. Gender would be a good example of a characteristic with a lower sampling error. Characteristics for minority racial groups will have larger sampling errors.

The table below lists typical sampling errors for given size subgroups for a 95% confidence interval. The values in the table should be added and subtracted from the characteristic's percentage in order to construct an interval. 95% of the intervals created this way will contain the value that would be obtained if all voters were interviewed using the same procedures. Other non-sampling factors, including nonresponse, are likely to increase the total error.

%Error Due to Sampling (+/-) for 95% Confidence Interval								
Number of Voters in Base of Percentage								
% Voters with Characteristic	100	101-200	201-500	501-950	951-2350	2351-5250	5251-8000	8001-15000*
5% or 95%	6	5	3	2	<b>2</b>	1	1	<b>1</b>
15% or 85%	11	7	5	4	<b>3</b>	2	1	<b>1</b>
25% or 75%	13	9	6	5	<b>3</b>	2	2	<b>1</b>
50%	15	10	7	5	<b>4</b>	3	2	<b>1</b>

\* chart bolding ours

### From National Election Pool FAQs 2007

#### What is the Margin of Error for an exit poll?

Every number estimated from a sample may depart from the official vote count. The difference between a sample result and the number one would get if everyone who cast a vote was interviewed in exactly the same way is called the sampling error. That does not mean the sample result is wrong. Instead, it refers to the potential error due to sampling. **The margin of error for a 95% confidence interval is about +/- 3% for a typical characteristic from the national exit poll and +/-4% for a typical state exit poll.**\* Characteristics that are more concentrated in a few polling places, such as race, have larger sampling errors. Other nonsampling factors may increase the total error.

\* bolding ours.

## Appendix 3 – Mechanics of Vote Manipulation

### Practical Constraints on any Nationwide Covert Vote Manipulation Capability

Some critics of the initial draft of this paper released in November 2006 questioned whether it was possible that a systematic tabulation bias could ever be deployed to electronic voting equipment on a nationwide scale without being detected. Others claimed that if that capability truly existed, it should guarantee that one party would remain in permanent control.

The technical and logistical challenges inherent in any attempt to secretly corrupt vote tabulation on a nationwide basis are of course hardly trivial, but expert consensus is that there are multiple credible methods. We believe that the potential methods that could feasibly be used to implement widespread electronic vote manipulation on a national scale with a high probability of remaining undetected are such that a significant lead time would be required prior to the election. There is therefore a risk that any unexpected late-breaking pre-election developments could overcome a pre-programmed bias.

### **Voting systems risk assessment**

Modern American electronic voting systems are geographically dispersed, distributed computer systems that are used intensively but infrequently. The end-to-end voting systems contain thousands of central tabulators and hundreds of thousands of in-precinct voting devices, all of which are purchased, maintained, upgraded, programmed, tested and used in actual elections in over 170,000 precincts across the United States on irregular schedules.

Through hands-on access, individual voting machines can be compromised one at a time through a variety of well-documented exploits.<sup>33</sup> But the sheer number of devices in use makes hands-on vote manipulation on a national scale a massively labor-intensive enterprise. The more individuals that are involved, the greater the likelihood of disclosure. The very ability successfully to orchestrate the collective behavior of tens of thousands of devices to achieve a desired outcome—election after election, without being detected—would depend on minimizing the number of people involved and so would require a significant degree of sophistication.

Undetected widespread vote-count corruption would certainly be not only the greatest computer security exploit of all time, it would be the greatest—and, in terms of the ultimate stakes, most lucrative—undetected crime in history. One must presume that any individuals capable of successfully pulling off such an exploit are clever, ruthless, and utterly determined to cover their tracks. We would not expect them to display naïveté nor simplicity, but rather to act at every step to preserve total secrecy of their presence and activities.

### **Voting system attacks that minimize the number of people involved**

The June 2006 Brennan Center report described in great detail precisely how software patches, ballot definition files, and memory cards could be used to

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<sup>33</sup> See footnotes 26 – 32 above.

enable just one individual to alter the outcome of an election conducted either on touchscreen DREs<sup>34</sup> or on optical scan equipment.<sup>35</sup>

As the Brennan Center report notes:

. . . [I]n a close statewide election . . . “retail” attacks, or attacks on individual polling places, would not likely affect enough votes to change the outcome. By contrast, the less difficult attacks are centralized attacks: these would occur against the entire voting system and allow an attacker to target many votes with few informed participants.

Least difficult among these less difficult attacks would be attacks that use Software Attack Programs. The reason is relatively straightforward: a software attack allows a single knowledgeable person (or, in some cases, small group of people) to reach hundreds or thousands of machines. For instance, software updates and patches are often sent to jurisdictions throughout a state. Similarly, replaceable media such as memory cards and ballot definition files are generally programmed at the county level (or at the vendor) and sent to every polling place in the county.

These attacks have other benefits: unlike retail denial-of-service attacks, or manual shut off of machine functions, they could provide an attacker's favored candidate with a relatively certain benefit (i.e., addition of x number of votes per machine attacked). And if installed in a clever way, these attacks have a good chance of eluding the standard inspection and testing regimens currently in place.<sup>36</sup>

### **Long-term evasion of detection**

Since it is clear that the motivation exists to take covert control of electronic voting in the United States and that there are credible mechanisms for a small number of malicious insiders at voting equipment vendors to do so, long-term success boils down to evading detection—and so maintaining this power over time. One critical element of maintaining long-term secrecy would be the tradeoff of carefully calibrating the degree of vote manipulation to avoid attracting suspicion, while also ensuring the desired political outcome.

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<sup>34</sup> Brennan Center June 2006 Report: “The Machinery of Democracy: Protecting Elections in an Electronic World,” pp. 34 – 40.

<sup>35</sup> *Ibid.*, p. 78.

<sup>36</sup> *Ibid.*, p. 48.

An individual in the position to introduce a covert vote manipulation software component into the operating system, firmware, device driver, or voting application itself would want to minimize risk of future detection and maximize the ease of changing the outcome of future contests. Ideally covert vote manipulation logic itself should be built into the machine as close to the factory as possible, rather than requiring redistribution of malicious program logic every election cycle; any change to the logic of a complex system could introduce new errors into the behavior of “benign” tabulation logic. And since political circumstances change, not all contests, elections and machines would be subject to the same type and degree of vote manipulation in every election, or the existence of the “Trojan Horse” itself would become all too evident.

Perhaps the easiest method to achieve both goals—long-term secrecy and long-term flexibility—is to introduce a general-purpose vote manipulation component that remains hidden within in the voting equipment for a long period of time, and that can be activated on demand by receipt of an external trigger. The trigger would not only activate the malicious software, but would also contain a parameter defining the size of the manipulation to implement. This is far from science fiction; parameterization is a basic computer software technique in use since the dawn of computing, and parameterization of voting equipment exploits is a powerful attack that is certainly technically feasible.<sup>37</sup>

Although of course we cannot know for certain in the absence of a proper investigation whether this was actually done in 2006, there is strong support for a hypothesis that the logistics of introducing malicious programming on a targeted nationwide basis is both technically feasible and would likely require a substantial lead time, necessitating deployment prior to this past October’s “perfect storm.”

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<sup>37</sup> Ibid, p. 38.

## STUDY III.

# Fingerprints of Election Theft: Were Competitive Contests Targeted?

## Comparison Between Exit Poll and Vote-count Disparities in Competitive vs. Noncompetitive Contests in Election 2006

Jonathan Simon, JD, Bruce O'Dell, Dale Tavis, PhD, Josh  
Mitteldorf, PhD<sup>1</sup>  
Election Defense Alliance

### Abstract

In this report, we describe results from a telephone poll conducted the night of the national election of November 2006. The poll methodology was explicitly designed to detect partisan manipulation of the vote-count, and to separate evidence for manipulation from poll sampling bias. Our premise was that politically motivated tampering would target races that were projected to be competitive, while the perpetrators would be less motivated to interfere in races that were not projected to be close. Designing our poll to be maximally sensitive to such a pattern, we selected 16 counties around the country where, of the three most prominent races (Governor, Senator or U.S. House), there was at least one competitive contest and one noncompetitive contest. In our study, the responses of the same group of respondents were compared to official election results for pairs of races, one competitive and one noncompetitive. We used paired data analysis to compare disparities between poll and official count for these matched pairs. Our results revealed much larger disparities in competitive than in noncompetitive races ( $p < 0.007$ ), suggesting manipulation that consistently favored Republican candidates. We also found a linear relationship between the

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<sup>1</sup> Jonathan Simon, JD, is Co-founder of Election Defense Alliance (EDA); Bruce O'Dell and Dale Tavis are EDA Data Analysis Co-coordinators; Josh Mitteldorf is a statistician, evolutionary biologist, and election integrity advocate.

size of the pro-Republican disparity and the tightness of the election ( $p < 0.000022$ ). These results corroborate analyses published elsewhere, also suggesting significant vote manipulation in favor of Republican candidates in the 2006 general election.

## Background

Recent American elections have been tabulated by computerized voting equipment that has been proven through independent investigation by qualified security experts to be wide open to systematic insider manipulation.<sup>2</sup> This fact has been acknowledged in the mainstream American press, and indeed in government reports.<sup>3</sup> Nevertheless, those who, taking the next logical step, gather and present evidence to suggest that at least some recent elections may have *actually been* compromised continue to be met with skepticism and indifference.

In light of this skepticism, election forensics experts have endeavored to take the measure of recent elections from several complementary perspectives. Several methods by which systemic election theft can be perpetrated electronically and invisibly—and with high confidence of evading immediate detection—have been documented.<sup>4</sup> With vote-counting software and hardware both ruled ‘proprietary’ and off-limits to inspection—and with limited access to, and the scheduled destruction of, paper election records, where they exist—*direct* proof of an electronically-altered election outcome may well be impossible.<sup>5</sup> Yet although systematic electronic vote manipulation may well go undetected both during and after an election, it can still leave behind rather glaring mathematical ‘fingerprints’. And when multiple analytic methods find mathematical ‘fingerprints’ that are all consistent with the same pattern of apparent mistabulation, the case becomes very strong—at least for anyone

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<sup>2</sup> See, e.g., [http://brennancenter.org/dynamic/subpages/download\\_file\\_39288.pdf](http://brennancenter.org/dynamic/subpages/download_file_39288.pdf), <http://itpolicy.princeton.edu/voting/ts-paper.pdf>, [http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm), <http://www.blackboxvoting.org/BBVtsxstudy.pdf>, or <http://www.blackboxvoting.org/BBVreport.pdf>.

<sup>3</sup> See, e.g., Government Accountability Office, Oct. 2005, at <http://www.gao.gov/new.items/d05956.pdf>.

<sup>4</sup> See fn 2.

<sup>5</sup> To these difficulties we may add the simple-enough employment of self-deleting tabulation code, which would leave no trace of foul play even in the unlikely event inspection were permitted.

willing to contemplate the evidence, even though the implications are profoundly disturbing.

In *Landslide Denied: Exit Polls vs. Vote Count 2006*,<sup>6</sup> a study published shortly after the 2006 election ('E2006'), authors Simon and O'Dell analyzed the nationwide disparity between official vote counts and the E2006 exit polls. They concluded that mistabulation of votes reduced the Democratic margin in total votes cast for the House of Representatives by a minimum of 4%, or 3 million votes. Based on the official margins of House races, the authors further concluded that, accurately tabulated, E2006 would have been an epic landslide, netting the Democrats a very substantial number of additional seats in Congress.

By examining in detail the 2006 U.S. House exit poll data's underlying demographic and voter-preference questions, the authors were able to confirm both the validity of the exit poll sample and the size of the official mistabulation.

Past comparisons between exit polls and official results have been questioned on the grounds that sampling bias may have played a role. By comparing the national sample's responses to a variety of established demographic and voter-preference benchmarks, *Landslide Denied* established that the national exit poll certainly did *not* 'oversample Democrats'.<sup>7</sup> *Landslide Denied* also argued that the Republicans might have succeeded in holding on to the House and the Senate, but for the fact that the manipulation that apparently benefited them was calibrated and engineered based on pre-October polling numbers, which subsequently shifted dramatically further toward the Democrats in the final weeks before the election. If the election had been held a month earlier, the vote-shift evidenced by the exit poll disparity would have sufficed to keep the Republicans in power.

This analysis has not been rebutted or challenged, although its evidence and conclusions are clearly presented and quite straightforward. On the other hand, it has gone almost completely unreported.<sup>8</sup>

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<sup>6</sup> See [http://electiondefensealliance.org/files/LandslideDenied\\_v.9\\_071507.pdf](http://electiondefensealliance.org/files/LandslideDenied_v.9_071507.pdf).

<sup>7</sup> The national sample that had allegedly 'oversampled Democrats' gave President Bush approval numbers at or above established benchmarks. Several other key indicators (such as racial composition, Party ID, vote for President in 2004, and Congressional approval) all corroborated the fact that the sample leaned, if anything, to the right.

<sup>8</sup> *Landslide Denied* was posted on the Election Defense Alliance website on 11/17/06, and simultaneously distributed through U.S. Newswire to hundreds of media outlets. It was picked up by *one*, a passing reference in a small publication in North Dakota. *Landslide Denied* was also submitted for inclusion in the record of Senate Rules Committee hearings on election fraud and security. It was not accepted and no explanation was offered for its rejection.

In the 2006 elections, the national House exit poll could provide, at most, an indication of aggregate mistabulation on a nationwide basis. Even so, in planning and preparing for forensic analysis of the 2006 elections, it was fair to assume that any damning evidence exit polls might provide would once again face skepticism in the press (as in ‘as usual, the exit polls oversampled Democrats and cannot be relied upon’), and among official voices of both political parties. Therefore, Election Defense Alliance sought to capture data from the 2006 election from a different and, we hoped, complementary angle.

### **Our Approach and Methodology**

In order to counter the anticipated dismissal of 2006 national exit poll evidence on the basis of sample bias, we turned to an approach that would effectively remove sampling bias as a factor by measuring how *the same sample of voters responded with respect to different electoral contests*. Our study was based on the premise that vote theft would be targeted to races that were within striking distance of a shift. We hypothesized that races that appeared close in the pre-election polls would be targeted for theft, while races that were projected to be landslides would not be corrupted. We designed a study to compare pairs of competitive and non-competitive races in such a way that responses from the same polling respondents would be used for both.

Therefore, we selected counties in which we anticipated, based on pre-election polling, that there would be at least one competitive contest and at least one noncompetitive contest among the races for U.S. House, U.S. Senate, and the governorship of the state.<sup>9</sup> For the purpose of paired (t-test) analysis, we viewed contests decided by a margin smaller than 10% as ‘competitive’ and contests decided by a margin of 10% or greater as ‘noncompetitive.’<sup>10</sup>

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<sup>9</sup> Although hundreds of counties nationwide would have met these basic criteria, our selection was further constrained by budgetary considerations: with approximately \$36,000 available for this project, the counties chosen had to be sufficiently small that the cost of obtaining the voter lists would not be prohibitive, and that enough counties could be surveyed to generate a statistically meaningful number of data points for analysis. Altogether 19 counties were surveyed for this project, of which 16 turned out to meet the criterion of having at least one competitive and one noncompetitive contest. These 16 counties form the basis of our primary analysis.

<sup>10</sup> Our ‘paired’ analysis of course necessitates a categorical line of demarcation. While 10% is a common-sense choice, others might be imagined. As will be seen below, the actual race margins tended to a bi-modal distribution (mean margin for competitive races = 3.2%, mean margin for noncompetitive races = 20.5%), generally distant enough from the 10% line to remove any concern about its arbitrariness. In fact, the divider could have been placed at 9% or 8% without having any impact on our paired analysis.

All contests in each selected county were sampled by a *single* Election Night survey of actual voters (whether at-precinct, early, or absentee) conducted by telephone on our behalf by the polling firm Survey U.S.A. As a result, the *same set of respondents* was asked to indicate how they had voted in each of the contests within each selected county. This ‘apples-to-apples’ comparison, rather than any presumed freedom from bias in the samples themselves,<sup>11</sup> provided the basis for our analysis.

## Hypothesis

Our hypothesis was that, although there would of course be disparities between survey results and vote counts in most (if not all) contests, in the absence of vote shifting foul play *selectively targeted to competitive races* there would be no statistically significant pattern of disparities by which competitive and noncompetitive contests could be distinguished.

## Results

Table 1 on the following page presents our core data for the 16 counties which had both competitive and noncompetitive contests. An expanded table—showing the actual winning margins of these contests, as well as the actual vote count and exit poll percentages within the sampled counties—is presented as Appendix 1.

Reading from left to right, Table 1 presents the county surveyed, the office contested, whether that contest proved to be competitive or noncompetitive, the disparity between vote count and survey results in competitive and noncompetitive races respectively, and the difference within each county between the disparities found in competitive and noncompetitive races (using the mean disparity when there were two competitive or noncompetitive races within a county).

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<sup>11</sup> In this type of survey, calls are placed on Election Night to all voters on the county registration lists, but only those respondents who indicate they actually cast a vote are included in the survey results. Response rates are typically quite low and there is no attempt to eliminate self-select response bias (e.g., if Republicans or Democrats have a greater tendency to respond and are therefore over-represented) via stratification techniques. Such efforts are not necessary for our purposes because response bias does not adversely affect our *comparison* between competitive and noncompetitive races drawn from the same set of respondents.

## 'Red shift' and 'blue shift' defined

We designate an official vote count more Republican than the survey results to be a 'red shift,' and an official vote count more Democratic than the survey results to be a 'blue shift.'

**TABLE 1**

**Comparison Between Survey and Vote Count Disparities  
in Competitive vs. Noncompetitive Contests in Election 2006  
(All Contests in Each County Sampled by A Single  
Election Night Survey of Actual Voters)**

County, State	Contest	Competitive?*	Within-County Exit Poll - Vote Count Disparity Competitive Contests (R-/D-)	Within-County Exit Poll - Vote Count Disparity NonCompetitive Contests (R-/D-)	Within-County Difference Between Avg. Competitive and NonCompetitive Disparities***
		C/NC			
Hardee, FL	Governor	C	7.5%		11.25%
	Senator	NC		-3.5%	
	House: FL-13	C	8.0%		
Okeechobee, FL	Governor	C	5.5%		12.50%
	Senator	NC		-9.5%	
	House: FL-16	C**	0.5%		
Emanuel, GA	Governor	NC		-1.0%	4.00%
	House: GA-12	C	3.0%		
Jefferson, GA	Governor	NC		0.0%	0.00%
	House: GA-12	C	0.0%		
Jefferson, IA	Governor	NC		0.5%	11.00%
	House: IA-2	C	11.5%		
Van Buren, IA	Governor	NC		8.0%	10.50%
	House: IA-2	C	18.5%		
Mower, MN	Senator	NC		-2.5%	6.00%
	House: MN-1	C	3.5%		
Pipestone, MN	Senator	NC		-1.5%	1.00%
	House: MN-1	C	-0.5%		
Cedar, MO	Senator	C	-1.5%		12.50%
	House: MO-4	NC		-14.0%	
Henry, MO	Senator	C	-1.5%		16.50%
	House: MO-4	NC		-18.0%	
Humboldt, NV	Governor	C	5.0%		-2.25%
	Senator	NC		5.0%	
	House: NV-2	C	0.5%		
Adams, OH	Governor	NC		-2.5%	8.75%
	Senator	NC		-1.0%	
	House: OH-2	C	7.0%		
Bradford, PA	Governor	NC		6.0%	-6.75%
	Senator	NC		7.5%	
	House: PA-10	C	0.0%		
Wyoming, PA	Governor	NC		-3.0%	-1.50%
	Senator	NC		-1.0%	
	House: PA-10	C	-3.5%		
Haywood, TN	Governor	NC		-2.0%	8.00%
	Senator	C	5.0%		
	House: TN-8	NC		-4.0%	
Lancaster, VA	Senator	C	-1.0%		-4.00%
	House: VA-1	NC		3.0%	
<b>AVERAGE</b>			<b>3.6%</b>	<b>-1.7%</b>	<b>5.47%</b>

\* Contests decided by a 9% or smaller margin are designated competitive; 10% or larger noncompetitive.

\*\* Contest for seat vacated by Mark Foley; shifted from noncompetitive to competitive status during October 2006.

\*\*\* Number is positive (+) where net shift is to Republican in competitive vs. noncompetitive contests.

All surveys conducted via telephone on Election Night 2006 by Survey USA.

The right-hand column conveys the overall picture. A positive percentage in the right-hand column indicates that there was more of a red shift (or less of a blue shift) in competitive than in noncompetitive contests in that county. That is, a positive percentage indicates a net shift toward the Republican candidate in the competitive versus noncompetitive contest(s) within a given county.

### **An Individual County Example**

To take Hardee County, Florida, as an example: the competitive contests were for Governor and U.S. House and the noncompetitive contest was for the U.S. Senate. The competitive contests exhibited a red shift of 7.5% and 8.0% respectively: meaning the official vote counts in Hardee in those races were 7.5% and 8.0% more Republican than the survey results, an average of 7.75%.

In the noncompetitive contest for U.S. Senate we see a blue shift of 3.5%, meaning the official vote count was 3.5% more Democratic than the survey results.

Overall, therefore, in Hardee County - *as measured by the survey responses of precisely the same group of voters* - the official vote counts in competitive contests were shifted by a net of 11.25% (that is, by 7.75% + 3.5%) to the Republican candidates, relative to the official vote count in the noncompetitive contest.

### **Sixteen-county analysis**

We find that relative red shift toward the Republican candidate in competitive contests occurred in 11 of the 16 counties. Only four counties exhibited a relative blue shift away from the Republican candidate in competitive contests.<sup>12</sup> One county exhibited no net shift, red or blue.

More significantly, we found that for the 19 competitive contests, the average survey vs. vote count disparity was a red shift of 3.6%, and for the 20 noncompetitive races the average disparity was a blue shift of 1.7%. *Competitive*

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<sup>12</sup> Interestingly, two of the four ‘net blue shift’ counties are located in Pennsylvania, a state which stood out in E2006 for bucking the red shift pattern in statewide U.S. Senate races. While a total of 21 Senate races exhibited red shifts (mean = 4.2%), Pennsylvania, a state under Democratic administrative control, was one of only five states to exhibit a blue shift (2%) in its Senate race. At this point we can do little more than speculate about the possible effects of partisan administrative control upon both aggregate misbehavior and targeting patterns. (See also [http://kdka.com/topstories/local\\_story\\_311194635.html](http://kdka.com/topstories/local_story_311194635.html))

contests were therefore relatively more red-shifted by an average of 5.3% per contest.<sup>13</sup>

### **Statistical significance of competitive race ‘red shift’**

Employing the paired t-test (two-tailed) to evaluate the statistical significance of this result, we find it to be statistically significant at the  $p < 0.007$  level, meaning that that much of a difference between disparities in competitive and noncompetitive contests would be expected by chance only *seven in 1000 times*.<sup>14</sup>

*According to our hypothesis, the string of positive percentages in the right-hand column should not occur unless systematic election mistabulation is occurring—selectively, in competitive contests, and favoring Republican candidates. In the absence of targeted mistabulation, the mean value at the bottom of the right-hand column would be at or very close to zero.*

### **Discussion**

We have already discussed the evidence for an *aggregate* mistabulation of votes in E2006 of a magnitude sufficient to alter the outcome of dozens of federal and statewide elections.<sup>15</sup> The aggregate evidence is based on the quasi-official exit polls conducted by Edison Research and Mitofsky International (‘Edison/Mitofsky’) for the media consortium known as the National Election Pool (‘NEP’).

In *Landslide Denied* it is shown not only that the NEP sample of the national electorate (i.e., the aggregate vote for all House races) was of a size that makes it a virtual impossibility that the 4% poll-vote disparity could occur as a result

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<sup>13</sup> Because of the above-mentioned averaging within counties, the 16-county mean difference between disparities in competitive and noncompetitive contests was a slightly higher 5.47%.

<sup>14</sup> A one-tailed t-test, justifiably employed if we are testing only for the likelihood of an overall competitive contest *red* shift, would yield a p value of 0.003, a 3/1000<sup>th</sup> prospect of chance occurrence. It should also be noted that a regression analysis of magnitude/direction of shift relative to magnitude of contest margin yields an F value of 21.9, corresponding to a p value of  $p < 0.000022$  and strongly corroborating our finding of strong correlation using the paired testing approach. Such an analysis also dispenses with what some might consider an arbitrary dividing line between competitive and noncompetitive contests at a margin of 10%, necessary for the paired-test approach. The shift-margin correlation is powerful using either approach. Please see Appendix 2 for this analysis.

<sup>15</sup> In *Landslide Denied*, the authors established a net shift to the Republican candidates for U.S. House of Representatives of at least 3 million votes nationwide.

of chance or sampling *error* but also, more significantly, that the alleged political *bias* of the sample towards the Democrats *did not exist*, as proven by the demographics of the exit poll sample itself.

Yet whenever a direct comparison between poll results (whether pre-election, exit, or post-election) and official votecounts is made and a disparity is noted, it is, inexplicably, always the *polls* that the media chorus hastens to discount and dismiss. Demonstrating the lax standards of computer security and the inadequate procedural safeguards universally applied to our electronic voting systems seems to make no impression. The present study was undertaken because we anticipated—correctly, as it turned out—that direct poll-vote comparisons, if they appeared to indicate outcome-determinative mistabulation, would likely face hasty dismissal, predictably on the grounds of sample bias. We therefore sought a methodology that would serve to eliminate *any* effect of sampling bias from the equation.<sup>16</sup>

### **How our study neutralizes the impact of sample bias**

In the vast majority of federal and state political contests, it is possible to ascertain well in advance of Election Day the degree to which the race will be competitive. It is therefore possible to target competitive contests for fraudulent manipulation in a timeframe that allows the necessary mechanisms to be selectively deployed<sup>17</sup> (for example, tainted memory cards,<sup>18</sup> or malicious code

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<sup>16</sup> Much of the analysis in E2004 focused on the astounding individual exit poll-votecount disparities that turned up in certain states and in the national popular vote. But some attention was also given to the telling *distribution* of disparities between states that were considered ‘battlegrounds’ on the one hand and ‘safe’ states on the other. It emerged that, of the 11 battleground states, 10 were red-shifted. It further emerged that, relative to their respective average MOEs (the battleground states were more heavily sampled than the safe states, which makes a shift of the same magnitude less likely to occur in a battleground state), the battleground states as a group were nearly three times as red shifted as the safe states.

So in a sense, in E2004, there was already a rough but glaring comparative analysis of competitive and noncompetitive states, pointing strongly to targeted vote-shifting. The question raised was, if the exit poll-votecount disparity was caused by ‘reluctant Bush responders’, why did this very convenient phenomenon (for which no evidence was ever presented) occur so disproportionately in competitive states; that is, why were Bush voters reluctant in Ohio and Florida (where it counted) but not in, say, Utah or Idaho (where it did not)? No cogent answer was ever given.

<sup>17</sup> See [http://brennancenter.org/dynamic/subpages/download\\_file\\_39288.pdf](http://brennancenter.org/dynamic/subpages/download_file_39288.pdf) pages 37-39 for parameterized attacks on voting systems.

<sup>18</sup> See <http://itpolicy.princeton.edu/voting/ts-paper.pdf> for attacks on voting systems via centrally-programmed memory cards.

or code parameters installed under the guise of a legitimate software distribution).

We found that we could identify such targeting patterns using poll-vote comparisons from which sampling bias had been eliminated as a factor. In the 16 counties we studied, *in the absence of fraud targeted to competitive contests*, we would expect no particular correlation between poll-vote disparities and the competitiveness of the contests. Disparities would of course be expected, both as predicted by the statistical margin of error (‘MOE’) of each poll and as a result of any sampling *bias* independent of such pure statistical considerations.<sup>19</sup>

But, since we are not relying upon a direct poll-votecount comparison, but rather upon comparison between disparities, we are not concerned with the impact of either sampling error or sampling bias on the poll-votecount disparities that constitute our data set. Indeed, sampling bias in any given county survey could be very substantial *without affecting the validity of our competitive-noncompetitive comparison*, because the *same* putatively biased set of respondents would be our benchmark for both competitive and noncompetitive contest votecounts.

Take, as an example, Van Buren County, Iowa. In this county the noncompetitive Governor’s race votecount margin was shifted 8% towards the Republican relative to the poll, a result on which it might be suggested that sampling bias (oversampling of Democrats) might have had an impact. But in the same county, *and with the same set of respondents*, the competitive House race votecount margin was shifted 18.5% towards the Republican relative to the poll. We can see that sampling bias, whether or not it was in fact present, *drops out of the equation entirely*, because it would be *equally* present in both races

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<sup>19</sup> It is important to understand the distinction between sampling *error* and sampling *bias*. Sampling error, generally reflected in a poll’s stated MOE, derives from the statistical chance that a fairly drawn sample (i.e., one drawn at random and without bias) will misrepresent the whole to some quantifiable, and usually very small, degree. Sampling bias, on the other hand, extends beyond any such purely statistical limitations to impound any intentional or inadvertent biases in the sampling process that yield further misrepresentation. A classic example would be interviewers who ignore random selection instructions by choosing respondents whom they know or who look more ‘like them’; another would be a differential response rate based on categorical receptivity to being interviewed or ownership of the technology (e.g., telephone, computer) used for the poll.

Effects of sampling bias can be virtually eliminated by a thorough demographic weighting process such as that employed by the NEP prior to publication of their poll results. Such a process was not, however, necessary to the design of the current study, as explained in fn. 11.

(using the same set of respondents) and could not account for the 10.5% difference between the two shifts.

Thus, in the absence of a competitive contest targeting pattern, disparities would be just about equally likely to occur, and equally likely to be in the “red” or “blue” direction, in competitive and noncompetitive contests alike.<sup>20</sup>

This is not what we found. *We found a strong correlation between the competitiveness of a contest and the poll-vote disparity for the county we surveyed.* Competitive contest vote counts, taken as a group, were strongly red-shifted, with an official vote count more Republican than poll result, as compared to noncompetitive contest vote counts.

The goal of our study was not to identify particular contests, counties, or districts as having been targeted for rigging, but rather to determine whether there existed an overall *pattern* indicative of a targeting process, an indelible fingerprint of electoral manipulation.

In this we succeeded, to a high level of statistical significance.

### **Methodological limitations**

No discussion would be complete without a frank acknowledgement of our study’s limitations. We were compelled by budgetary considerations to select a small set of relatively small counties for our study. We could not afford to test any of the larger counties, where the cost of registration lists and survey completions would have been prohibitive.

In applying our approach to future elections, in particular to 2008, we hope to significantly expand the number and scope of counties surveyed. Should E2008 be as much a victim of targeted rigging as E2006 appears to have been, the expanded study we expect to undertake will expose and quantify the pattern to a ‘DNA-level’ of statistical certainty.

*Or, put another way, it would appear that in light of political circumstances any effort to seize national control through manipulation of the vote counting in 2008 will have to be either of an aggregate magnitude that is truly shocking and so carries a high risk of exposure, or so well-targeted that the targeting pattern itself sticks out like a sore thumb.*

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<sup>20</sup> “Just about equally” because the MOE decreases very slightly between a 50%-50% contest and a 75%-25% contest (most competitive and least competitive ends of our spectrum of contests). At the 200 – 300 sample sizes we are primarily working with, the MOE decrease is about 1%. This minor variation had no quantitative impact on our analysis.

To deter or expose massive electoral subversion, both modes of attack must be anticipated and monitored.

## Conclusion

Our study was modest in scope because of financial constraints, but it was tightly-focused in its design. The result shines a powerful triple beam into the dark corner of secret electronic vote-counting in American elections.

> First, it detects a clear pattern indicating a wholesale shift in tallied votes. This is consistent with our study of aggregate vote shifting presented in *Landslide Denied*.

> Second, it identifies the overall direction of the shift: in favor of Republican candidates, once again corroborating our aggregate findings in *Landslide Denied*.

> Third, it confirms the common-sense notion that any group with the will and ability to secretly manipulate vote tabulation would likely focus their efforts on changing the outcomes of close contests, where the power of electronic vote-shifting would be maximized through selective targeting, while at the same time minimizing the size of the aggregate shift—and the corresponding risk of discovery.

We found evidence, in *Landslide Denied*, of an aggregate net shift of 3 million votes nationwide from Democratic to Republican candidates for the U.S. House. If one imagines those shifted votes distributed randomly and evenly across the 435 contests, it would amount to a net shift of just under 7000 votes per contest. If we apply this model by taking 3500 putatively shifted votes from each Republican candidate and transferring them back to the Democratic candidate (for a net shift of 7000 votes), it would reverse the outcome of 15 House contests in 2006. This is not an inconsiderable effect, as it would have given the Democrats a 30-seat greater margin (248 – 187). If, however, we target and apply those same 3 million shifted votes to the most competitive Republican victories, we find it would instead reverse the outcome of 112 contests, giving the Democrats an overwhelming 345 – 90 majority in the House.

We naturally do not suggest that vote-shifting in 2006 was, or could be, targeted with such hindsight-aided precision. Our point is rather that targeting, even at the modest level of precision obtainable months in advance (from historical voting patterns and pre-election polling) can vastly increase the bottom-line effect of the covert shift of a given total number of votes or—conversely and more ominously—can enable a political control-shifting electoral manipulation

that leaves only the smallest and all-but-undetectable fingerprint of *aggregate* mistabulation.<sup>21</sup>

In E2006, the explosive movement toward the Democrats in the month of October<sup>22</sup> would have overwhelmed a rational targeting plan finalized during the pre-October period, after which the logistics of further deployment or recalibration of vote-shifting mechanisms would most likely have been prohibitively problematic.<sup>23</sup> Such an extraordinary pre-election dynamic certainly cannot be counted on again to defeat attempts to seize political control via electoral manipulation. We submit that our findings regarding targeting in the present study, coupled with our earlier findings in *Landslide Denied*, sound an alarm for democracy, *and make a compelling case for expanded monitoring of future elections.*

We restate here the concluding sentences of *Landslide Denied*, as these latest findings only serve to increase the urgency of our warning:

‘The vulnerability is manifest; the stakes are enormous; the incentive is obvious; the evidence is strong and persistent. Any system so clearly at risk of interference and gross manipulation cannot and must not be trusted to tally the votes in any future elections.’

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<sup>21</sup> This is especially ominous in light of the fact that, in the absence of any effective system of *intrinsic* electoral audits, the only check mechanism of sufficient sensitivity and statistical power to effectively challenge the official numbers spit out by the computers is the demographically validated national exit poll (assuming that ‘unadjusted’ exit poll results are made available in 2008). But this check mechanism detects only an aggregate disparity. Targeted rigging allows the theft of both the Presidency and Congress with a footfall light enough to avoid setting off this sole remaining burglar alarm.

<sup>22</sup> See *Landslide Denied* pp. 13 – 15.

<sup>23</sup> See *Landslide Denied*, Appendix 2. Although the vulnerabilities of vote-counting computers make it possible to shift (or delete or fabricate) virtually unlimited numbers of votes, the size of the footprint and the likelihood of detection of course increases accordingly. The logical vote-shifting algorithm therefore remains ‘take no more than you need’. A possible exception is the Presidential race, in which there is a rather compelling advantage to shifting enough votes nationwide to ensure a popular-vote victory, even though an Electoral College victory might be secured with a well-targeted fraction of those votes. A popular vote victory—as reflected in the contrasting behavior of the Democratic candidates in 2000 and 2004—plays a major role in granting or denying a Presidential candidate the standing, in the media and in the court of public opinion, to challenge even quite egregious anomalies in decisive battleground states.

# Appendix 1 – Expanded Table 1

Comparison Between Exit Poll and Vote Count Disparities In Competitive vs. Noncompetitive Contests In Election 2006 (All Contests in Each County Sampled By A Single Election Night Survey Of Actual Voters In That County)										
County, State	Contest	Contest Margin	Competitive/ NonCompetitive*	Within-County Exit Poll		Within-County Vote Count		Within-County Exit Poll - Vote Count Disparity	Within-County Exit Poll - Vote Count Disparity	Within-County Difference Between Avg. Competitive and NonCompetitive Disparities***
				R	D	R	D	Competitive Contests (R+D-)	NonCompetitive Contests (R+D-)	
Hardee, FL	Governor	7% [R]	C	49%	45%	57%	38%	7.5%	-3.5%	11.25%
	Senator	22% [D]	NC	50%	46%	46%	51%			
	House: FL-13	<1% [R]	C	51%	45%	61%	39%			
Okeechobee, FL	Governor	7% [R]	C	45%	51%	51%	46%	5.5%	-9.5%	12.50%
	Senator	22% [D]	NC	44%	54%	35%	64%			
	House: FL-16	1% [D]	C**	45%	52%	45%	51%			
Emanuel, GA	Governor	20% [R]	NC	58%	35%	60%	38%	3.0%	-1.0%	4.00%
	House: GA-12	<1% [D]	C	58%	38%	63%	37%			
Jefferson, GA	Governor	20% [R]	NC	50%	49%	50%	49%	0.0%	0.0%	0.00%
	House: GA-12	<1% [D]	C	46%	52%	47%	53%			
Jefferson, IA	Governor	10% [D]	NC	38%	56%	39%	56%	11.5%	0.5%	11.00%
	House: IA-2	2% [D]	C	43%	54%	55%	45%			
Van Buren, IA	Governor	10% [D]	NC	43%	56%	50%	47%	18.5%	8.0%	10.50%
	House: IA-2	2% [D]	C	45%	54%	64%	36%			
Mower, MN	Senator	20% [D]	NC	33%	62%	31%	65%	3.5%	-2.5%	6.00%
	House: MN-1	6% [D]	C	33%	64%	38%	62%			
Pipestone, MN	Senator	20% [D]	NC	55%	44%	52%	44%	-0.5%	-1.5%	1.00%
	House: MN-1	6% [D]	C	56%	43%	56%	44%			
Cedar, MO	Senator	3% [D]	C	59%	38%	56%	38%	-1.5%	-14.0%	12.50%
	House: MO-4	39% [D]	NC	56%	37%	43%	52%			
Henry, MO	Senator	3% [D]	C	46%	50%	44%	51%	-1.5%	-18.0%	16.50%
	House: MO-4	39% [D]	NC	40%	57%	22%	75%			
Humboldt, NV	Governor	4% [R]	C	65%	28%	69%	22%	5.0%	5.0%	-2.25%
	Senator	14% [R]	NC	65%	30%	70%	25%			
	House: NV-2	6% [R]	C	59%	34%	60%	34%			
Adams, OH	Governor	23% [D]	NC	45%	52%	43%	55%	7.0%	-2.5%	8.75%
	Senator	12% [D]	NC	46%	52%	46%	54%			
	House: OH-2	2% [R]	C	47%	51%	55%	45%			
Bradford, PA	Governor	20% [D]	NC	48%	48%	56%	44%	0.0%	6.0%	-6.75%
	Senator	18% [D]	NC	48%	49%	57%	43%			
	House: PA-10	6% [D]	C	51%	45%	53%	47%			
Worming, PA	Governor	20% [D]	NC	47%	49%	46%	54%	-3.5%	-3.0%	-1.50%
	Senator	18% [D]	NC	54%	42%	55%	45%			
	House: PA-10	6% [D]	C	59%	36%	58%	42%			
Haywood, TN	Governor	29% [D]	NC	20%	77%	19%	80%	5.0%	-2.0%	8.00%
	Senator	3% [R]	C	30%	68%	36%	64%			
	House: TN-8	46% [D]	NC	19%	77%	17%	83%			
Lancaster, VA	Senator	1% [D]	C	57%	40%	57%	42%	-1.0%	-4.0%	-4.00%
	House: VA-1	28% [R]	NC	60%	37%	64%	35%			
Average								3.6%	-1.7%	5.47%

\* Contests decided by a 9% or smaller margin are designated competitive; 10% or larger noncompetitive.  
 \*\* Contest for seat vacated by Mark Foley; shifted from noncompetitive to competitive status during October 2006.  
 \*\*\* Number is positive (+) where net shift is to Republican in competitive vs. noncompetitive contests.  
 All surveys conducted via telephone on Election Night 2006 by Survey USA. (Hyperlinks show survey details including MOEs)

## Appendix 2 – Regression Analysis

The purpose of regression analysis was to look at the correlation between vote margin and within-county exit poll-votecount disparity. We included in this analysis as a separate data point each of the 39 races in each of the 16 counties that served as the basis for our paired t-test analysis. This analysis represents a way of looking at the same data as we looked at in our paired t-test analysis, but from a different angle, with two advantages over the paired t-test analysis and two disadvantages.

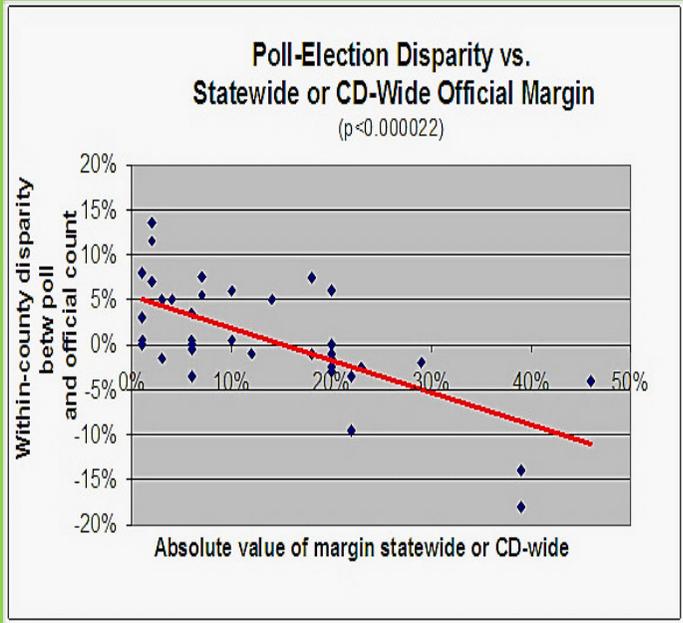
The disadvantages were:

1. The regression analysis doesn't completely eliminate bias (though it eliminates the great majority of potential bias) as an explanation for our results, since some counties contributed data points to a non-competitive race without being matched by a competitive race, or vice versa. Therefore, the exact same population was not used for competitive and non-competitive races in this analysis. However, the two populations were very similar, and whereas a *potential* for a small amount of bias exists in this analysis, we see no reason to suspect that it does exist.
2. The rationale for using the paired t-test was that competitive races were characterized by the potential for fraud, whereas there would be no reason for committing fraud in non-competitive races. With that assumption, the *vote margins* would be unimportant, as long as the races could be characterized as competitive or non-competitive. If this assumption was accurate, then an analysis that included the *vote margins* of the race would include meaningless data, which could weaken the ability to detect meaningful differences between competitive and non-competitive races.

The advantages were:

1. When analyzing continuous variables (which vote margins are), regression analysis generally provides more power to detect meaningful differences than t-tests, which do not make use of the continuous nature of the variable, but dichotomize it instead.
2. To the extent that it might have been difficult to ascertain whether a race was competitive vs. non-competitive prior to the election, it would be reasonable to assume that the more competitive a race was the more likely that it would be subject to fraud. And, it is reasonable to suspect that the closer a race was presumed to be, the more susceptible it would be to fraud.

The regression analysis provided an F value of 21.85, corresponding to a p value of  $p < 0.000022$ . That means that the correlation between vote margin and within-county exit poll-votecount disparity was so strong that it would have occurred only about one out of 50,000 times on the basis of chance alone (see graph below).



### Appendix 3 – SurveyUSA Data Links

<u>State</u>	<u>County</u>	<u>Link</u>
<u>MO</u>	<u>Henry</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=a6e072a1-a39e-4f6c-95e4-af1a0150bcac">http://www.voterrollcall.com/client/PollReport.aspx?q=a6e072a1-a39e-4f6c-95e4-af1a0150bcac</a>
<u>MO</u>	<u>Cedar</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=cfd957af-bc6d-406e-b05e-23f025dd91a3">http://www.voterrollcall.com/client/PollReport.aspx?q=cfd957af-bc6d-406e-b05e-23f025dd91a3</a>
<u>TN</u>	<u>Haywood</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=f5256fb4-48be-434f-a8ac-1e6c9c768e00">http://www.voterrollcall.com/client/PollReport.aspx?q=f5256fb4-48be-434f-a8ac-1e6c9c768e00</a>
<u>FL</u>	<u>Hardee</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=7bf59ee4-894f-43fd-9113-23bc4a8a21a8">http://www.voterrollcall.com/client/PollReport.aspx?q=7bf59ee4-894f-43fd-9113-23bc4a8a21a8</a>
<u>FL</u>	<u>Okeechobee</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=aae0d44f-8fd7-426b-9186-cdd8d222292">http://www.voterrollcall.com/client/PollReport.aspx?q=aae0d44f-8fd7-426b-9186-cdd8d222292</a>
<u>PA</u>	<u>Bradford</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=d3b628f5-5da3-42c7-96b9-350bc4fd11d2">http://www.voterrollcall.com/client/PollReport.aspx?q=d3b628f5-5da3-42c7-96b9-350bc4fd11d2</a>
<u>PA</u>	<u>Wyoming</u>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=f04c2158-acee-4a6e-912f-14ef91303f0">http://www.voterrollcall.com/client/PollReport.aspx?q=f04c2158-acee-4a6e-912f-14ef91303f0</a>

<a href="#"><u>MN</u></a>	<a href="#"><u>Mower</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=f065fa14-3452-4321-99dc-42fa8c48ee53">http://www.voterrollcall.com/client/PollReport.aspx?q=f065fa14-3452-4321-99dc-42fa8c48ee53</a>
<a href="#"><u>MN</u></a>	<a href="#"><u>Pipestone</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=6889cbbc-ade1-400e-a49e-c629be32bce0">http://www.voterrollcall.com/client/PollReport.aspx?q=6889cbbc-ade1-400e-a49e-c629be32bce0</a>
<a href="#"><u>OH</u></a>	<a href="#"><u>Adams</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=42f186df-1fdc-4f41-b5d6-b9b30026106d">http://www.voterrollcall.com/client/PollReport.aspx?q=42f186df-1fdc-4f41-b5d6-b9b30026106d</a>
<a href="#"><u>GA</u></a>	<a href="#"><u>Jefferson</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=b962e036-0513-423b-9a5b-5d29892bf0c3">http://www.voterrollcall.com/client/PollReport.aspx?q=b962e036-0513-423b-9a5b-5d29892bf0c3</a>
<a href="#"><u>GA</u></a>	<a href="#"><u>Emanuel</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=dd565bbb-8dfc-4143-bd8c-016ac197203b">http://www.voterrollcall.com/client/PollReport.aspx?q=dd565bbb-8dfc-4143-bd8c-016ac197203b</a>
<a href="#"><u>IA</u></a>	<a href="#"><u>Van Buren</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=b19fd14c-f493-406f-a18c-cf62dc1e1df6">http://www.voterrollcall.com/client/PollReport.aspx?q=b19fd14c-f493-406f-a18c-cf62dc1e1df6</a>
<a href="#"><u>IA</u></a>	<a href="#"><u>Jefferson</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=2b03ce9c-121a-45f4-a3d5-5453d177465d">http://www.voterrollcall.com/client/PollReport.aspx?q=2b03ce9c-121a-45f4-a3d5-5453d177465d</a>
<a href="#"><u>NV</u></a>	<a href="#"><u>Humboldt</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=a36dfabf-2b31-4513-bc83-5b416056f84d">http://www.voterrollcall.com/client/PollReport.aspx?q=a36dfabf-2b31-4513-bc83-5b416056f84d</a>
<a href="#"><u>VA</u></a>	<a href="#"><u>Lancaster</u></a>	<a href="http://www.voterrollcall.com/client/PollReport.aspx?q=70c3610b-c22e-49ed-b5a1-e102cf6ad4cf">http://www.voterrollcall.com/client/PollReport.aspx?q=70c3610b-c22e-49ed-b5a1-e102cf6ad4cf</a>

## STUDY IV.

# Believe It (Or Not): The 2010 Massachusetts Special Election for U.S. Senate

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**Jonathan D. Simon**  
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### **Background**

On January 19, 2010 the Commonwealth of Massachusetts held a Special Election to fill the Senate seat left open by the death of Senator Edward Kennedy. It would be difficult to overstate the political implications of this election. Because the seat was the 60<sup>th</sup> for the Democrats, it carried with it the effective balance of power in the Senate: without it, in a dramatically polarized and decidedly uncooperative political environment, the Democrats would not be able to override a GOP filibuster. As the media let Americans know, everything from the shape of healthcare policy to financial regulation, from energy and environmental policy to critical judicial appointments hung in the balance.

Just as significantly, the victory by Republican Scott Brown over supposed shoo-in Martha Coakley was taken and trumpeted as a “sign:” the political calculus for the upcoming general elections in 2010 and 2012 was instantly rewritten, with the anger and unrest that apparently produced Brown’s victory establishing expectations of catastrophic losses for the Democrats in November and beyond. All in all, the political impact of this single, under-the-radar state election was seismic, very nearly “presidential.”

### **The Electoral System**

With stakes that high, citizens not only of Massachusetts but of the rest of the United States would hope to find firm basis for *knowledge*, as opposed to mere

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<sup>1</sup> Revised October 28, 2011.

*faith*, that the votes were accurately counted as cast and that the seating of the certified winner, along with the massive implications alluded to above, at least reflected the will and intent of the voting constituency. Instead, this is what a citizen seeking such knowledge about the Massachusetts Special Election would find:

- 97% of the ballots cast were counted unobservably by optical scan equipment (“opscan”), scanning voter-marked paper ballots; 3% of the ballots cast were publicly hand-counted.<sup>2</sup>
- The opscan devices were programmable computers manufactured by two corporations, Diebold/Premier Election Solutions (“Diebold/Premier”) and Elections Systems and Software (“ES&S”), which together supply 80% of such equipment nationwide,<sup>3</sup> and 100% in Massachusetts.<sup>4</sup>
- The vast majority<sup>5</sup> of the opscan devices were programmed, distributed and serviced by the highly secretive LHS Corporation, located in Methuen, Massachusetts.
- No systematic audit of the count was performed.
- No spot-checks of the count were performed.
- There was no recount of any ballots.
- There were no exit polls performed.
- No actual ballots stored within the opscan equipment were examined or are permitted to be examined.

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<sup>2</sup> Vote counting protocols identified by Massachusetts City and Town Directory at <http://www.sec.state.ma.us/ele/electclk/clkidx.htm>; election returns at <http://www.boston.com/news/special/politics/2010/senate/results.html>.

<sup>3</sup> Source information at <http://www.verifiedvoting.org/verifier/>.

<sup>4</sup> Of the 280 opscan communities in Massachusetts, 223 use the Diebold/Premier AccuVote-OS scanner; 56 use the Optech Eagle scanner, originally manufactured by ES&S but whose distribution was split between ES&S and the smaller vendor Sequoia Voting Systems as a result of a court order in an antitrust action; and one employs the ES&S M100 scanner. Diebold/Premier was recently sold to ES&S for the brow-raising underprice of \$5 million (about the value of a *single* large-county voting equipment contract), and indeed the sale was nixed by the U.S. Department of Justice, Antitrust Division, as it would have given ES&S a virtually complete vote counting monopoly in the United States. In the absence of Diebold/Premier or any other substantial competitors, however, ES&S continues to enjoy near-monopolistic market domination.

<sup>5</sup> 79.6%, or 223 of the 280 opscan communities, were serviced by LHS.

- No memory cards, which internally direct each opscan’s counting process and store the results, were examined or, as proprietary information belonging to their corporate programmer, are permitted to be examined.
- No computer code directing the recording and counting of ballots or the display of results was examined or, as proprietary information belonging to the programmer, is permitted to be examined.

The inquiring citizen or, for that matter, *public official* or *candidate* would unfortunately discover ***no information*** about the 97% of ballots counted by opscan equipment, other than the vote totals as displayed by that equipment after the last ballot had been scanned. That is, he or she would be reduced to 100% pure, unadulterated, blind faith that the totals displayed were accurate—fact and not fiction.

If, in fact, the vendor corporations, or any insider(s) with access to the programming and distribution processes, had chosen to serve a private political agenda rather than the public trust, *there would be nothing in the official processes of voting, vote-counting, and election certification to indicate that such a breach had occurred.* If, for example, certain memory cards had been programmed to tally any ballot bearing a stray mark as a vote for Candidate X, this single exploit might result in an outcome-determinative shift of votes, and no one except the programmer would ever know. Or if certain memory cards had been programmed to shift every n<sup>th</sup> vote for Candidate A to Candidate B, who but the programmer would know? Or again, if the “zero counters”<sup>6</sup> on an opscan are set to +X for the candidate whose victory is sought and –X for the candidate marked for defeat, at the end of the day the total votes recorded by the opscans will match the number of voters who have signed the poll book and the election administrator will be satisfied that the opscan has counted accurately and there has been a “clean” election, while 2X net votes have been stolen per machine so rigged.

Such vulnerability to fraud has by now been well researched and documented.<sup>7</sup> Unfortunately it tends to be regarded in the abstract, a technical possibility rather

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<sup>6</sup> The “zero counter” refers to the number assigned to the first vote recorded for a given candidate or proposition. Logically that number is “1” but a single line of code can be inserted into the 500,000+ lines already on the memory card to alter that to *any* number, positive or negative. There are no technical limitations to this manipulation, the only limiting concern being whether the rigged vote totals will pass the “smell test.”

<sup>7</sup> See [http://sites.google.com/site/remediaetc/home/documents/Scientific\\_Studies\\_7-20-08.pdf](http://sites.google.com/site/remediaetc/home/documents/Scientific_Studies_7-20-08.pdf) for a collection of such studies.

than an actual menace. The thinking appears to be that, *because this is America*, such things simply do not happen. Let us now set aside this comforting *a priori* conclusion and biopsy the Massachusetts Special Election with such tools as are available.

### Our Analysis

We turn, in the absence of any direct validation of the opscan vote count, to the only ballots *not* counted invisibly. Just over 65,000 ballots, in 71 communities,<sup>8</sup> were counted by hand under public observation. Had these ballots been distributed randomly throughout the Commonwealth, we would expect the handcount results to fall within 1.0% of the opscan results with better than 99.9999% confidence.<sup>9</sup> Since the handcounts derive from discrete communities, however, and since Massachusetts is not politically homogeneous, an attempt must be made to quantitatively characterize and relate the two “meta-jurisdictions” which we shall call “Handcountville” (consisting of the 71 handcount communities) and “Opscanshire” (consisting of the remaining 280 opscan communities) respectively.

The first and most obvious way to relate Handcountville and Opscanshire would be by party registration. Such data is available from the Massachusetts Secretary of State, updated to October 2008.<sup>10</sup> It is given in Table 1.<sup>11</sup>

**TABLE 1**

Two-Party Registration - Massachusetts 2008			
Comparative Totals	GOP Reg	Dem Reg	Dem Margin
Handcount %	31.8%	68.2%	36.4%
Opscan %	23.7%	76.3%	52.6%
Differential	-8.1%	8.1%	16.2%

The two-party registration numbers paint Handcountville as significantly more Republican territory than is Opscanshire. Two-party registration is, however, a limited indicator in Massachusetts because just over half the voters in the

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<sup>8</sup> See fn. 2.

<sup>9</sup> See <http://www.raosoft.com/samplesize.html>.

<sup>10</sup> See [http://www.sec.state.ma.us/ele/elepdf/st\\_county\\_town\\_enroll\\_breakdown\\_08.pdf](http://www.sec.state.ma.us/ele/elepdf/st_county_town_enroll_breakdown_08.pdf).

<sup>11</sup> Full data presented in the Appendix.

Commonwealth (50.75%) are registered as “unenrolled” in either major party.<sup>12</sup> Without knowing more about the unenrolled voters in each meta-jurisdiction, reaching beyond this impression to a conclusive quantitative characterization is not feasible.

Fortunately, there exist indicators other than party registration that illuminate the political characteristics of voting constituencies. Massachusetts held contests for United States Senator in each of the two past biennial elections. The results, as broken down by meta-jurisdiction, are given in Table 2.

**TABLE 2**

	U.S. Senate - 2008			U.S. Senate - 2006		
Comparative Totals	Beatty-R	Kerry-D	Kerry Margin	Chase-R	Kennedy-D	Kennedy Margin
Handcount %	31.5%	68.5%	37.0%	31.1%	68.9%	37.8%
Opscan %	32.0%	68.0%	36.0%	30.5%	69.5%	39.0%
Handcount-Opscan Disparity	0.5%	-0.5%	1.0%	-0.6%	0.6%	-1.2%

In each of these statewide senatorial elections, Handcountville and Opscanshire exhibited virtual political congruence, much as we would expect if indeed Handcountville votes were a random sample of the state as a whole, establishing baseline expectations for the political divisions of the two meta-jurisdictions in similar contests such as the 2010 Massachusetts Special Election. In fact, when we combine the vote totals for the previous two Senate elections (2006 and 2008), we find *exact* congruence between the voters of Handcountville and Opscanshire, as shown in Table 3.

**TABLE 3**

Combined Vote for U.S. Senate 2006 and 2008			
Comparative Totals	GOP	Dem	Dem Margin
Handcount %	31.3%	68.7%	37.4%
Opscan %	31.3%	68.7%	37.4%
Handcount-Opscan Disparity	0.0%	0.0%	0.0%

<sup>12</sup> See [http://www.sec.state.ma.us/ele/elepdf/st\\_county\\_town\\_enroll\\_breakdown\\_08.pdf](http://www.sec.state.ma.us/ele/elepdf/st_county_town_enroll_breakdown_08.pdf).

When we turn to the 2010 Special Election, however, we find a radically different comparative outcome. The results of the Brown-Coakley contest, as broken down by meta-jurisdiction, are given in Table 4.<sup>13</sup>

**TABLE 4**

<b>U.S. Senate - 2010 (Special)</b>			
<b>Comparative Totals</b>	<b>Brown-R</b>	<b>Coakley-D</b>	<b>Brown Margin</b>
<b>Handcount %</b>	48.6%	51.4%	<b>-2.8%</b>
<b>Opscan %</b>	52.6%	47.4%	<b>5.2%</b>
<b>Handcount-Opscan Disparity</b>	<b>4.0%</b>	<b>-4.0%</b>	<b>8.0%</b>

Where votes were observably counted by hand, the Democrat Martha Coakley defeated the Republican Scott Brown by a margin of 2.8%; where votes were counted unobservably and secretly by machine, Brown defeated Coakley by a margin of 5.2%.

There is no evidence that this whopping marginal disparity of 8.0% is attributable to divergent political leanings of the two meta-jurisdictions. In fact, there is strong evidence to the contrary: as the previous two Senate contests and what we can glean from party registration indicate, Handcountville is no more Democratic, and likely less so, than Opscanshire. Nor is there reason to suspect a demographic bias as cause: Handcountville consists primarily of small rural communities; Coakley, born and raised in the northwestern part of Massachusetts, had spent the past 30 years since graduation from Boston University Law School as a Boston-based, big-city attorney and prosecutor, serving from 1999 to 2007 as high-profile District Attorney of Middlesex County, home to 54 communities of which only four are in Handcountville.

Nonetheless it is incumbent upon our analysis to consider what would be the last-standing “benign” explanation for the handcount-opscan disparity and

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<sup>13</sup> The percentages exclude, for clarity, the Libertarian Party candidate, who received less than 1% of the vote, and whose inclusion does not appreciably affect the results. For a complete, town-by-town breakdown of the Brown-Coakley vote, the vote in prior Senate elections serving as baselines, and voter registration data, please see the Appendix published with the original paper, available at [http://electiondefensealliance.org/files/BelieveIt\\_OrNot\\_100904.pdf](http://electiondefensealliance.org/files/BelieveIt_OrNot_100904.pdf).

Coakley’s Handcountville victory: that Handcountville impounds relatively more western towns near Coakley’s old “home base,” and that her Handcountville victory therefore reflects nothing more insidious than a “favorite daughter” phenomenon at work. Fortunately for our analysis, Coakley ran statewide for Attorney General in 2006, allowing us to assess whether Coakley enjoys “favorite daughter” status in Handcountville. The contest, against a Cambridge-based opponent, was, like the senatorial elections of 2006 and 2008, not sufficiently competitive to be a rational target for manipulation. The results are given below in Table 5:<sup>14</sup>

**TABLE 5**

<b>Massachusetts Attorney General - 2006</b>			
<b>Comparative Totals</b>	<b>Coakley-D</b>	<b>Frisoli-R</b>	<b>Coakley Margin</b>
<b>Handcount %</b>	72.6%	27.4%	<b>45.2%</b>
<b>Opscan %</b>	73.0%	27.0%	<b>46.0%</b>
<b>Handcount-Opscan Disparity</b>	<b>0.4%</b>	<b>-0.4%</b>	<b>0.8%</b>

We observe that in 2006, her only other statewide election, Martha Coakley performed just as well in Opscanshire as she did in Handcountville; in fact, she ran slightly better in the opscan communities. There was no “favorite daughter” phenomenon, no regional effect, and no Coakley advantage in the handcount jurisdictions. There was also, given the 45% margin, no incentive to manipulate and nothing at all to be gained from a “small” shift of votes on the order of the 5% shift sufficient to reverse the outcome of the 2010 Special Election.

The handcount vs. opscan disparity in the 2010 Special Election for Senate in Massachusetts stands as an unexplained anomaly of dramatic numerical proportions. We stated at the outset of our analysis that if the hand-counted ballots had been distributed randomly throughout the Commonwealth, we would expect the handcount results to fall within 1.0% of the opscan results with better than 99.9999% confidence. The odds of an 8.0% marginal disparity would be *beyond astronomical*. We have now further established that the handcount “sample” is, for comparison purposes, “better” than random: that is, based on demographics and voting patterns, the handcount voters would be more likely

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<sup>14</sup> Full returns at [http://www.boston.com/news/special/politics/2006\\_elections/general\\_results/attorney\\_general.html](http://www.boston.com/news/special/politics/2006_elections/general_results/attorney_general.html), as referenced by Kathy Dopp of ElectionMathematics.org.

than the opscan voters to vote for Brown. The odds therefore of an 8.0 marginal disparity *in the other direction* would be, and there is no better way to say this, *beyond beyond astronomical*. Statisticians never say “impossible” but that is, for all earthly intents and purposes, what it is.

It remains to be noted that, as with the prior Coakley statewide race, neither the 2006 nor the 2008 Senate election that preceded it—and that we have presented as baseline contests—was competitive enough to invite manipulation: the risk entailed in shifting a net of 36% of the votes statewide is prohibitive;<sup>15</sup> and a shift in, say, the 5 – 10% range would not alter the outcome and would therefore garner no reward. *Such was not the case with the Brown-Coakley contest, where the risk-reward ratio was extremely favorable: a net shift of a mere 5% of the machine-counted votes would be sufficient to reverse the outcome.* As seismic as the Brown victory was, it was numerically plausible enough to pass the smell test, rendering the risk minimal. The reward, as noted at the beginning, was politically astronomical.

### **Not A Fluke**

Should it be objected that this election somehow constitutes an isolated instance perhaps influenced by unperceived but legitimate factors peculiar to its particular terrain and moment in time, we may expand our inquiry to a neighboring time and a neighboring venue where, fortunately, both opscan and hand counting also continue to coexist. The state of New Hampshire also uses computerized voting equipment manufactured by Diebold/Premier, and is also serviced exclusively by LHS Corporation. In the 2008 general election we find Obama running significantly better in Handcountville, NH than in Opscanshire, NH—a disparity that increases to alarming proportions when party registration data is used to normalize the two meta-jurisdictions, as presented in Table 6.<sup>16</sup>

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<sup>15</sup> While such a massive shift of votes is technically feasible, the election result would not begin to pass the smell test, opening computerized electoral manipulation to intense scrutiny and undermining the entire enterprise nationwide.

<sup>16</sup> Full data for New Hampshire is too extensive for inclusion in the Appendix; it is compiled from the NH Secretary of State website, at <http://www.sos.nh.gov/general2008/index.htm>.

**TABLE 6**

**NH Vote for President 2008 Relative to Party Registration**

New Hampshire Statewide E2008	Dem	Rep	Total
Opscan Presidential Vote	54.51%	45.49%	100.00%
Opscan Registered Voters	50.00%	50.00%	100.00%
Opscan vs. Party-Registration Differential	4.51	-4.51	0
Handcount Presidential Vote	56.51%	43.49%	100.00%
Handcount Registered Voters	46.69%	53.31%	100.00%
Handcount vs. Party-Registration Differential	9.82	-9.82	0
Handcount vs. Opscan Relative To Party Registration	5.31	-5.31	10.62

We see that Obama ran 4.51% ahead of (and McCain a corresponding 4.51% behind) two-party registration numbers in opscan jurisdictions but 9.82% ahead of two-party registration numbers in handcount jurisdictions. The normalized net disparity is 10.62%, comparable in eye-popping magnitude to the 8.0% disparity observed in the Massachusetts Special election.

Furthermore, in New Hampshire as in Massachusetts, we were fortunate to have a noncompetitive contest which can, as do the 2006 and 2008 Senate and the 2006 Attorney General contests in Massachusetts, function as a baseline for comparison. The results for the 2008 New Hampshire gubernatorial contest are presented in Table 7:

**TABLE 7**

<b>New Hampshire Statewide Vote for Governor 2008</b>			
	Lynch-D	Kenney-R	Lynch Margin
<b>Handcount %</b>	71.76%	28.24%	<b>43.52%</b>
<b>Opscan %</b>	71.76%	28.24%	<b>43.52%</b>
<b>Handcount-Opscan Disparity</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Once again we find that, in a noncompetitive contest, the handcount and opscan jurisdictions exhibit political congruence (in this case, exact congruence to the

second percentage decimal place), where in a presumptively competitive contest (the Presidential race), we find a glaring disparity.

## Conclusion

It may fairly be objected that none of this numerical or “circumstantial” evidence, however strong, *proves* that computerized fraud has taken place or that the Massachusetts Special Election was “stolen,” and we readily agree. To furnish such proof, beyond not just a reasonable doubt but any shred of doubt, we would need access to either memory cards, the code that actually ran in the opscans on Election Day, and/or the actual voter-marked ballots (chain of custody of course preserved), *all of which are conveniently off-limits to inquiry*. For anyone wondering, though, how much trust to place in privatized, concealed, and computerized vote counting—past, present and future—we suggest that the MA Special numbers scream for themselves.

And as numbers as implausible as these continue to rear their heads in high-stakes elections throughout the United States—invariably revealing a shift of votes *in the same direction*, whether measured against exit polls, pre-election polls, or observable votecounts<sup>17</sup>—we ask how the prevailing and irrational

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<sup>17</sup> See generally, Charnin R, *Proving Election Fraud*. Bloomington, IN: AuthorHouse, 2010; Miller MC Ed., *Loser Take All: Election Fraud and the Subversion of Democracy 2000-2008*. Brooklyn, NY: Ig Publishing, 2008; Freeman S, Bleifuss J, *Was The 2004 Presidential Election Stolen?* New York: Seven Stories Press, 2006; Simon J, O’Dell B, *Landslide Denied: Exit Polls vs. Vote Count* (2006); Simon J, O’Dell B, Tavis D, Mitteldorf J, *Fingerprints of Election Theft: Were Competitive Contests Targeted?* (2007).

Note particularly the rightward or “red” shift measured in the presidential election of 2008, which—though it was, as a result of the Republican free-fall following the late-September crash of the markets and the general economy, insufficient to alter the outcome—was in fact of a magnitude even greater than that measured in 2004. The election of Barack Obama, contrary to the general impression, was thus anything but an “all clear” with respect to computerized electoral manipulation.

It must further be noted, however, that exit polls and tracking polls alike are now weighted according to demographics drawn largely if not exclusively from *prior election* exit polls that were distorted rightward when “adjusted” to match official vote tallies. Thus, because votecounts *were* treated as sacrosanct, and all currently employed demographic baselines “tuned” to those red-shifted numbers, prior electoral manipulation clears the path for ongoing and future electoral manipulation by red-shifting the baselines against which such manipulation might be measured.

With pre-election polls and exit polls so corrupted to oversample to the right, the telltale disparities between these previously reliable baselines and the votecounts shrink or disappear (making manipulated elections appear to be more in line with expectations), and comparison between computer and hand counts may survive as the sole reliable resource for numerical forensic investigation.

level of trust in invisible, unobservable vote counting can be maintained? We further ask how we can continue to employ a system that keeps software, code, memory cards, and all key aspects of the vote counting process secret, and delegates anyone seeking evidence of electoral validity to such an *indirect* quest for comparisons and baselines and numerical fingerprints as we have been obliged to undertake?

We return to the Massachusetts Special Election, which has not only dramatically altered the balance of power in Washington but has indeed ushered in a dramatically altered set of political expectations going forward into the critical elections of 2010 and 2012, as the hyper-polarization of American politics continues.<sup>18</sup> We cannot say with 100% certainty that the 97% of votes counted on optical scanners were subject to manipulation. But we can fairly ask: “*What evidence exists that they were not?*”

We have found *none*—no checks, audits, ballot inspections, hand tallies, exit polls, memory card or computer code examinations. Not a thing beyond pure *faith* that the corporations (and we have, for the purposes of this analysis, ignored their documented and self-proclaimed partisan proclivities) and insiders charged with the secret, unobservable counting of 97% of the votes in Massachusetts, have decided to honor the public trust at the expense of any other personal, economic, or political agenda of their own *or of anyone who would seek to influence them*. In an age of steroids and hGH, credit default swaps, Ponzi schemes, and massive institutional frauds coupled with hyper-partisan, true-believer politics, such “faith” amounts to little more than rank denial.

Nor, in the final analysis, is it evident to us that *additional* layers of technology would ultimately suffice to thwart a determined electoral manipulator—and, given the massive stakes in a politically polarized 21<sup>st</sup> Century America, we must anticipate the highest level of determination to bring about desired outcomes by any and all means. We have seen exit polls discredited, audits (Ohio 2004, e.g.) gamed, chains of ballot custody observed in the breach. Perhaps most critically, as long as it takes an expert to implement, or indeed to comprehend, a security protocol, every non-expert citizen is left on the outside looking in, never receiving knowledge, as opposed to mere *assurance*, that the

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<sup>18</sup> It is easy enough to see how capacity to manipulate would lead to hyper-polarization: as victory becomes a given, the player is incentivized to make that victory *mean more* by moving further and further from the center; this appears to be what is occurring on a systemic level, and accounts at least in part for the bizarre politics of the computerized voting era. To wit, with rigged elections, it is not necessary to “move to the center” to win; but this newfound “freedom to be radical” is, alas, *one-sided*, and that is precisely the political dynamic we are witnessing unfold.

bedrock protocol of his or her democracy has not been corrupted. Only transparency, *visible and observable counting by humans or non-programmable devices*<sup>19</sup> at every step—which is just as feasible today as it was a mere generation ago<sup>20</sup>—can bestow that knowledge.

Computers can help us in many ways and will continue to play a major role in our lives—periodic glitches, hacks, and meltdowns notwithstanding. But to blindly and needlessly entrust our nation’s *elections*—particularly its federal elections, which so directly determine our national direction—to private, corporate and, it must be said, partisan enterprises operating and calculating in secret beyond our capacity to observe and validate, is, to put it with the bluntness this emergency demands, collective insanity.

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<sup>19</sup> E.g., lever machines, in which each aspect of counting can be monitored.

<sup>20</sup> Using a parametric tool developed by Dave Berman, it has been shown that handcounting all contests for federal office (the maximum number of such races on any ballot is three) would require citizen participation averaging *one hour per voter lifetime* (one four-hour shift for which each citizen would have a one in four chance of being selected during his or her life), a civic obligation far less onerous than jury duty.

## STUDY V.

# The Likely Voter Cutoff Model: What Is So *Wrong* with Getting It *Right*?

Jonathan D. Simon<sup>1</sup>

March 17, 2011

Logic tells us, and experience confirms, that political pollsters stay in business and prosper by predicting election outcomes accurately. Pollsters are now publicly ranked by various scorekeepers<sup>2</sup> according to how brilliantly close or embarrassingly far off they turn out to be when the returns come in. A “Certificate of Methodological Purity” may make a nice wall ornament, but matters not a whit when it comes to success within the highly competitive polling profession.

If election returns in competitive races were being systematically manipulated in one direction over a period of several biennial elections, we would expect pollsters to make methodological adjustments necessary to match those returns. Indeed, it would be nothing short of professional suicide not to make those adjustments, and turn whatever methodological handsprings were required to continue “getting elections right.”

In the computerized election era—where virtually every aspect of the vote counting process is privatized and concealed; where study after study, from Princeton to the GAO, has concluded that the vote counting computers are extremely vulnerable to manipulation; and where statistical analyses pointing to such manipulation have been reflexively dismissed, no matter how compelling—it may be that the methodological contortions required for pollsters to “get elections right” constitute the most powerful evidence that computer-based election fraud and theft are systemic and rampant.

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<sup>1</sup> Jonathan D. Simon, JD, is Executive Director of Election Defense Alliance.

<sup>2</sup> See, e.g., the Fordham University 2008 ranking:

[http://www.fordham.edu/campus\\_resources/enewsroom/archives/archive\\_1453.asp](http://www.fordham.edu/campus_resources/enewsroom/archives/archive_1453.asp).

Enter the Likely Voter Cutoff Model, or LVCM for short. Introduced by Gallup about 10 years ago (after Gallup came under the control of a right-wing Christianist heir), the LVCM has gathered adherents until it is now all-but-universally employed, albeit with certain fine-tuning variations. The LVCM uses a series of screening questions—about past voting history, residential stability, intention of voting, and the like—to qualify and disqualify respondents from the sample. The problem with surveying the population at large or even registered voters, *without* screening for likelihood of voting, is obvious: you wind up surveying a significant number of voters whose responses register on the survey but who then *don't vote*. If this didn't-vote constituency has a partisan slant it throws off the poll relative to the election results—generally to the left, since as you move to the right on the political spectrum the likelihood of voting appears to rise.

But the problem with the LVCM as a corrective is that it far overshoots the mark: that is, *it eliminates many individuals from the sample who will in fact cast a vote*, and the respondents/voters so eliminated, as a group, are acknowledged by all to be to the left of those who remain in the sample, skewing the sample to the right (a sound methodology, employed for a time by the NY Times/CBS poll, would solve the participation problem by down-weighting, *but not eliminating*, the responses of interviewees less likely to vote). So the LVCM—which disproportionately eliminates members of the Democratic constituency, including many who will in fact go on to cast a vote, by falsely assigning them a *zero percent* chance of voting—*should get honestly tabulated elections consistently wrong*. It should over-predict the Republican/Right vote and under-predict the Democratic/Left vote, most often by an outcome-determinative 5-8% in competitive elections.

Instead it performs brilliantly and has therefore been universally adopted by pollsters, no questions asked, not just in the run-up to elections as in the past, but now all year round, setting expectations not just for electoral outcomes but for broad political trends, contributing to perceptions of political mojo and driving political dynamics—rightward, of course. In fact, the most “successful” LVCM models are now the ones that are *strictest* in limiting participation, including those that eliminate all respondents who cannot attest that they have voted in the three preceding biennial elections, cutting off a slew of young, poor, and transient voters. The impact of this exclusion in 2008 should have been particularly devastating, given the millions of new voters turned out by the Democrats. Instead the LVCM got 2008 just about right.<sup>3</sup> Pollster Scott

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<sup>3</sup> We note in passing that an extraordinary, 11<sup>th</sup>-hour Republican free-fall, triggered by the collapse of Lehman Bros. and the subsequent economic crash, produced an Obama

Rasmussen, formerly a paid consultant to the 2004 Bush campaign, employs the LVCM most stringently to winnow the sample, eliminating more would-be Democratic voters than do most if not all of his professional colleagues. A quick survey of his polls at [www.rasmussenreports.com](http://www.rasmussenreports.com) shows a nation unrecognizably canted to the right, and yet Rasmussen Reports was ranked “the most accurate national polling firm in the 2008 election” and close to the top in 2004 and 2006.

There is something *very* wrong with this picture and very basic logic tells us that the methodological contortion known as the LVCM can get election results so consistently right *only if those election results are consistently wrong*—that is, shifted to the right in the darkness of cyberspace.

A moment to let that sink in, before adding that, if the LVCM shift is not enough to distort the picture and catch up with the “red-shifted” votecounts, polling (and exit polling) samples are also generally weighted by partisanship or Party ID. The problem with this is that these Party ID numbers are generally drawn from prior elections’ final exit polls—exit polls that were “adjusted” in virtually every case *rightward* to conform to votecounts that were to the right of the *actual* exit polls, the unshakable assumption being that the votecounts are gospel and the exit polls therefore wrong. In the process of “adjustment,” also known as “forcing,” the demographics (including Party ID, age, race, etc.) are dragged along for the ride and shift to the right. These then become the new benchmarks and baselines for *current* polling, shifting the samples to the right *and enabling prior election manipulations to mask forensic/statistical evidence of current and future election manipulations*.

To sum up, we have a right-shifting tunable fudge factor in the LVCM, now universally employed with great success to predict electoral outcomes, particularly when tuned to its highest degree of distortion. And we have the incorporation of past election manipulations into current polling samples, again pushing the results to the right. These methodological contortions and distortions could not be successful—in fact they would put the pollsters quickly out of business—absent a consistent concomitant distortion in the *votecounts* in competitive races.<sup>4</sup>

Since polls and election outcomes are, after some shaky years following the advent of computerized vote counting, now in close agreement (though still not

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victory in the face of a “red shift”—votecounts more Republican and less Democratic than the exit polls—even greater than that measured in 2004.

<sup>4</sup> *Noncompetitive* races tend neither to be polled (no horserace interest) nor rigged (an outcome reversal wouldn’t pass the smell test).

exit polls, which are weighted to false demographics but of course do *not* employ the LVCN, and therefore still come in consistently to the left of vote counts until they are “adjusted” rightward to conformity), everything looks just fine. But it is a consistency brought about by the polling profession’s imperative to find a way to mirror/predict vote counts (imagine, if you will, the professional fate of a pollster stubbornly employing *undistorted* methodology, who insisted that his/her polls were right and both the official vote counts *and* all the other pollsters wrong!). It is a consistency, achieved without malice on the part of the pollsters, that almost certainly conceals the most horrific crime, with the most devastating consequences, of our lifetimes.

## STUDY VI.

# E2014: A Basic Forensic Analysis

**Jonathan D. Simon**

Any comparative forensic analysis is only as “good” as its baselines. In *Landslide Denied*<sup>1</sup>—our archetypal post-election comparative forensics study, in which the “red shift” (the rightward disparity between exit poll and votecount results) was identified and measured—a critical component of the analysis was to establish that the exit poll respondents accurately represented the electorate. We employed a meta-analysis of multiple measures of the demographics and political leanings of the electorate to demonstrate that the exit polls in question had not “oversampled” or over-represented Democratic or left-leaning voters (in fact any inaccuracy turned out to be in the opposite direction), and therefore that those polls constituted a valid baseline against which to measure the red-shifted votecounts.

In *Fingerprints of Election Theft*,<sup>2</sup> we went further and removed all issues of sample bias from the equation by conducting a separate poll in which we asked *the same set of respondents* how they had voted in at least one competitive and one noncompetitive contest on their ballot. The noncompetitive contests, being presumptively unsuitable targets for rigging, thus served as the baselines for the competitive contests, and the relative disparities could be compared without concern about any net partisan tendencies of the respondent group.

More recently we have commented on the feedback loop that develops between election results and polling/sampling methodologies, such that consistently and unidirectionally shifted votecounts trigger, in both pre-election and exit polls, methodological adaptations that mirror those shifts.<sup>3</sup> Approaching E2014, we observed that the near-universal use of the Likely Voter Cutoff Model (LVCM) in pre-election polling, and stratification to demographic and partisanship quanta derived from (rightward) adjusted prior-election exit polls in all polling,

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<sup>1</sup> See Study II.

<sup>2</sup> See Study III.

<sup>3</sup> See Study V; see also <http://truth-out.org/news/item/27203-vote-counts-and-polls-an-insidious-feedback-loop>.

were methodological distortions that pushed both exit polls and pre-election polls significantly to the right, corroding our baselines and making forensic analysis much less likely to detect rightward shifts in the vote counts.

Indeed, given the rightward distortions of the adaptive polling methodologies, we noted that *accurate* polls in E2014 would serve as a red-flag signal of rightward manipulation of the vote counts. In effect, the LVCM and the adjusted-exit-poll-derived weightings constituted a rightward “pre-adjustment” of the polls, such that any rightward vote count manipulations of comparable magnitude would be “covered.”

It is against this backdrop that we present the E2014 polling and vote count data, recognizing that the adaptive polling methodologies that right-skewed our baselines would combine to reduce the magnitude of any red shift we measured and significantly mitigate the footprint of vote count manipulation in this election.

The tables that follow compare polling and vote count results, where polling data was available, for U.S. Senate, gubernatorial, and U.S. House elections. The exit polling numbers represent the first publicly posted values, prior to completion of the “adjustment” process, in the course of which the poll results are forced to congruity with the vote counts.<sup>4</sup> The “red shift” represents the disparity between the vote count and exit poll margins. For this purpose, a margin is positive when the Democratic candidate’s total exceeds that of the Republican candidate. To calculate the red shift, we subtract the vote count margin from the exit poll margin, so a positive red shift number represents a “red,” or rightward, shift between the exit poll and vote count results.

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<sup>4</sup> Because these “unadjusted” exit polls, which have not yet been tainted by the forcing process, are permanently removed from public websites often within minutes of poll closings, they must be captured as screenshots or in free-standing html format prior to their disappearance. At Election Defense Alliance we archive these captures as part of our forensic operations.

Table 1

E2014 U.S. SENATE EXIT POLL-VOTECOUNT DISPARITY ("RED SHIFT")							
STATE	EXIT POLL %		Margin	VOTECOUNT %		Margin	RED SHIFT
	D	R	(D - R)	D	R	(D - R)	
KY	45.0%	52.0%	-7.0%	40.7%	56.2%	-15.5%	8.5%
SC(1)	41.6%	50.6%	-9.0%	36.8%	54.3%	-17.5%	8.5%
GA	48.8%	48.2%	0.6%	45.2%	52.9%	-7.7%	8.3%
WV	38.9%	58.6%	-19.7%	34.5%	62.1%	-27.6%	7.9%
ME	35.7%	64.4%	-28.7%	31.7%	68.3%	-36.6%	7.9%
KS(I) <sup>5</sup>	45.6%	49.4%	-3.8%	42.5%	53.3%	-10.8%	7.0%
SD	33.2%	47.8%	-14.6%	29.5%	50.4%	-20.9%	6.3%
LA	44.7%	38.4%	6.3%	42.1%	41.0%	1.1%	5.2%
NC	49.0%	45.6%	3.4%	47.3%	48.8%	-1.5%	4.9%
MN	56.6%	41.4%	15.2%	53.2%	42.9%	10.3%	4.9%
AR	42.1%	54.4%	-12.3%	39.4%	56.5%	-17.1%	4.8%
IA	46.7%	50.8%	-4.1%	43.8%	52.1%	-8.3%	4.2%
SC(2)	39.6%	59.4%	-19.8%	37.1%	61.1%	-24.0%	4.2%
IL	54.4%	42.1%	12.3%	53.1%	43.1%	10.0%	2.3%
OR	58.5%	38.1%	20.4%	55.7%	36.9%	18.8%	1.6%
VA	49.6%	47.4%	2.2%	49.2%	48.3%	0.9%	1.3%
NH	52.1%	47.9%	4.2%	51.5%	48.2%	3.3%	0.9%
TX	35.2%	61.8%	-26.6%	34.4%	61.6%	-27.2%	0.6%
MI	56.1%	42.4%	13.7%	54.6%	41.3%	13.3%	0.4%
AK	46.4%	49.1%	-2.7%	45.8%	48.0%	-2.2%	-0.5%
CO	45.8%	49.8%	-4.0%	46.3%	48.2%	-1.9%	-2.1%
<b>AVERAGE RED SHIFT</b>							<b>4.1%</b>

<sup>5</sup> In the Kansas race the Republican was opposed by an Independent candidate.

Table 2

E2014 GUBERNATORIAL EXIT POLL-VOTECOUNT DISPARITY ("RED SHIFT")							
STATE	EXIT POLL %		Margin	VOTE COUNT %		Margin	RED SHIFT
	D	R	(D - R)	D	R	(D - R)	
OH	40.4%	56.1%	-15.7%	32.9%	63.8%	-30.9%	15.2%
SD	31.7%	62.9%	-31.2%	25.4%	70.5%	-45.1%	13.9%
CA	62.5%	37.5%	25.0%	58.9%	41.1%	17.8%	7.2%
NY	56.8%	36.8%	20.0%	54.0%	40.6%	13.4%	6.6%
GA	47.3%	48.7%	-1.4%	44.9%	52.7%	-7.8%	6.4%
OR	55.0%	43.1%	11.9%	49.9%	44.1%	5.8%	6.1%
WI	49.7%	49.4%	0.3%	46.6%	52.3%	-5.7%	6.0%
ME	45.7%	44.7%	1.0%	43.4%	48.2%	-4.8%	5.8%
MN	54.2%	42.9%	11.3%	50.1%	44.5%	5.6%	5.7%
SC	44.2%	53.8%	-9.6%	41.4%	55.9%	-14.5%	4.9%
PA	57.0%	42.5%	14.5%	54.9%	45.1%	9.8%	4.7%
KS	48.6%	47.9%	0.7%	46.1%	50.0%	-3.9%	4.6%
IA	39.6%	57.4%	-17.8%	37.3%	59.0%	-21.7%	3.9%
MI	49.2%	49.8%	-0.6%	46.9%	50.9%	-4.0%	3.4%
IL	48.0%	48.5%	-0.5%	46.4%	50.3%	-3.9%	3.4%
AR	43.2%	53.8%	-10.6%	41.5%	55.4%	-13.9%	3.3%
TX	40.8%	58.2%	-17.4%	38.9%	59.3%	-20.4%	3.0%
FL	47.0%	47.0%	0.0%	47.1%	48.1%	-1.0%	1.0%
AK(I) <sup>6</sup>	49.5%	46.6%	2.9%	48.1%	45.9%	2.2%	0.7%
NH	52.7%	47.4%	5.3%	52.5%	47.3%	5.2%	0.1%
CO	49.2%	47.2%	2.0%	49.2%	46.1%	3.1%	-1.1%
<b>AVERAGE RED SHIFT</b>							<b>5.0%</b>

<sup>6</sup> In the Alaska race the Republican candidate was opposed by an Independent.

**Table 3**

<b>2014 U.S. HOUSE EXIT POLL - VOTECOUNT DISPARITY ("RED SHIFT")</b>			
	<b>D %</b>	<b>R %</b>	<b>Margin</b>
GENERIC CONGRESSIONAL BALLOT	43.2%	45.4%	<b>-2.2%</b>
U.S. HOUSE NATIONAL EXIT POLL	48.1%	49.9%	<b>-1.8%</b>
U.S. HOUSE NATIONAL VOTECOUNT	45.2%	50.7%	<b>-5.5%</b>
<b>RED SHIFT</b>			<b>3.7%</b>
<b>Total Votes Counted</b>			
			77,564,577
<b>Net Votes Red Shifted</b>			
			2,897,414
<b>Maximum Contests Reversed</b>			
			89

To summarize the data presented in Tables 1 – 3:

- The U.S. Senate red shift averaged 4.1% with a half dozen races presenting red shifts of over 7%. Of the 21 Senate elections that were exit polled, 19 were red-shifted.
- The gubernatorial red shift averaged 5.0% and 20 out of the 21 races were red-shifted.
- In U.S. House elections, which are exit polled with an aggregate national sample,<sup>7</sup> the red shift was 3.7%. This is the equivalent of approximately 2.9 million votes which, if taken away from the GOP winners of the closest elections, would have been sufficient to reverse the outcomes of 89 House races such that the Democrats would now hold a 120-seat (277 – 157) House majority.<sup>8</sup>
- Although the thousands of state legislative contests are not exit-polled, it is fair to assume that the consistent red shift numbers that we found

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<sup>7</sup> The sample size of the House poll exceeded 17,000 respondents, yielding a Margin of Error (MOE) of less than 1%.

<sup>8</sup> Of course I am not suggesting that vote theft can be targeted with such infallible precision. But it would make no sense at all *not* to target vote theft to the closest races and shift enough votes to ensure narrow victories. When one couples the evidence of a nearly 3 million vote disparity with even a modestly successful targeting protocol, the result is easily sufficient to flip the balance of power in the U.S. House.

in the Senate, House, and gubernatorial contests would map onto these critical (as we have seen) down-ballot elections as well.

These red shift numbers, well outside applicable margins of sampling error, are egregious even by the dubious historical standards of the elections of the computerized voting era in America. Although it is an *indirect* measure of mistabulation, the red shift has been, with very few exceptions, pervasive throughout that era, and it is not reflective of the impact of any of the overt tactics of gerrymandering, voter suppression, or big money. It represents a very telling incongruity between how voters indicate that they voted and the official tabulation of those votes. While it is not “smoking gun” proof of targeted mistabulation, it is, in the magnitude and persistence we have witnessed over the past half-dozen biennial election cycles, just about impossible to explain without reference to such fraud. It is simply too much smoke for there not to be a fire.

We relied as well on pre-election polling averages as a corroborative baseline,<sup>9</sup> and found that the red shifts from these predictions were comparable, though somewhat smaller than the exit poll-votecount red shifts (3.3% vs. 4.1% for the U.S. Senate races; 3.5% vs. 5.0% for the gubernatorial races; and 3.3% for the Generic Congressional Ballot<sup>10</sup> vs. 3.7% for the U.S. House Aggregate Exit Poll). We suspect that these differences can be accounted for by the impact of the Likely Voter Cutoff Model in pre-election polling, which pushes samples even further right than does the use of prior elections’ adjusted exit poll demographics to weight the current exit poll sample, thereby further reducing the poll-votecount disparity.

The standard arguments have of course been put forward that all these exit polls (and pre-election polls) were “off,” that essentially every pollster in the business (and there are many), including the exit pollsters, overestimated the turnout of Democratic voters, which was “known” to be historically low because the official votecounts and a slew of unexpected Democratic defeats tell us it was. In response to this entirely tautological argument, there are two non-jibing realities to be considered.

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<sup>9</sup> The pre-election polling numbers represent an average of all polls available from the two-months prior to Election Day (Source: RealClearPolitics at [http://www.realclearpolitics.com/epolls/latest\\_polls/elections/](http://www.realclearpolitics.com/epolls/latest_polls/elections/). See also [www.ballotpedia.com](http://www.ballotpedia.com), a very flexible and useful resource).

<sup>10</sup> The Generic Congressional Ballot is a tracking poll that asks a national sample of respondents whether they intend to vote for the Democratic or Republican candidate for U.S. House in their district.

The first is that the sampling methodologies of the polls were *already* distorted to impound the anticipated low turnout rate of Democratic voters in off-year elections, a model that has been grounded on the official votecounts of this century’s three previous suspect computerized midterm elections, E2002, E2006, and E2010.

The second is what would have to be termed the apparent schizoid behavior of the E2014 electorate, in which—from county-level referenda in Wisconsin backing expanded access to healthcare and an end to corporate personhood, to state-level ballot proposals to raise the minimum wage across America (see Table 4)—voters approved, by wide margins, the very same progressive proposals that the Republican candidates they apparently elected had violently opposed.

**Table 4**

<b>E2014 - Ballot Propositions</b>	<b>Margin of Passage</b>	<b>Status</b>
AK Minimum Wage Increase	38.7%	Pass
AK Legalized Marijuana	6.4%	Pass
AK Protects Salmon vs. Mining	31.8%	Pass
AR Campaign Finance Reform (Lobbyist Regulation)	4.8%	Pass
AR Minimum Wage Increase	31.8%	Pass
FL Water and Land Conservation	50.0%	Pass
FL Medical Marijuana (60% required)	15.2%	Pass
IL Right to Vote (anti-VOTERID)	45.4%	Pass
IL Minimum Wage Increase	32.8%	Pass
IL Birth Control Inclusion in Prescription Drug Insurance.	31.8%	Pass
IL Millionaire Tax Increase for Education	27.2%	Pass
NE Minimum Wage Increase	19.0%	Pass
NJ Funds for Open Space and Historic Preservation	29.2%	Pass
NM Student Included on Board of Regents	29.4%	Pass
NM Public Library Bond	25.9%	Pass
NM Education Bond	19.6%	Pass
OR ERA	28.4%	Pass
OR Legalized Marijuana	12.0%	Pass
RI Clean Water, Open Space, Healthy Communities Bonds	41.8%	Pass
SD Minimum Wage Increase	10.1%	Pass
SD Health Provider Inclusion (anti insurance corps)	23.6%	Pass
SD Minimum Wage Increase	10.1%	Pass
WA Universal Background Checks for Gun Purchases	18.6%	Pass
<b>Average Margin of Passage</b>	<b>25.4%</b>	
CO "Personhood" (Anti-Abortion)	-29.6%	Fail
ND Life Begins at Conception	-28.2%	Fail
WA Gun Rights (pro gun owner)	-10.6%	Fail
<b>Average Margin of Failure</b>	<b>-22.8%</b>	

The wide margins are significant because they tell us that, unlike the key contests for public office, these ballot propositions were well outside of smell-test rigging distance. Thus, even had defeating them been an ancillary component of a strategy that appears riveted on seizing full governmental power rather than scoring points on isolated issue battlefields, these ballot propositions would have failed any reasonable risk-reward test that might have been applied, and thus were left alone.<sup>11</sup>

**Table 5**

CONGRESSIONAL APPROVAL RATING		
Approve	Disapprove	Margin
8%	89%	<b>-81%</b>
OBAMA APPROVAL RATING		
Approve	Disapprove	Margin
47%	52%	<b>-5%</b>
OWN REPRESENTATIVE DESERVE REELECTION?		
Yes	No	Margin
29%	41%	<b>-12%</b>
HAS CONGRESS PASSED ANY LEGISLATION THAT WILL IMPROVE LIFE IN AMERICA?		
Yes	No	Margin
11%	69%	<b>-58%</b>

**Source: Rasmussen Reports (Week Preceding E2014)**

With so much not making sense about E2014 it seems hardly necessary to add that it makes no sense at all for an historically unpopular Congress to be shown such electoral love by the voters that exactly TWO (out of 222) incumbent members of the Republican House majority lost their seats on November 4, 2014, while the GOP *strengthened* its grip on the House by adding 12 seats to

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<sup>11</sup> As was the state of California, the one place in America where Democrats actually made U.S. House *gains* in E2014. This perpetuates a pattern we have noted in several previous elections that may speak to the deterrence value of a well-designed audit protocol and a higher level of scrutiny from the (Democratic) Secretary of State’s office than is found in the vast majority of other states.

its overall majority, and of course took control of the U.S. Senate, 31 governorships, and 68 out of 100 state legislative bodies.

It would seem to require magicianship of the highest (or lowest) order to pull these results from a hat known to contain a Congressional Approval rating in the single digits (See Table 5). In handing over vote counting to computers, neither the processes nor the programming of which we are permitted to observe, we have chosen to *trust the magician*, and we should not be at all surprised if for his next trick he makes our sovereignty disappear.

## STUDY VII.

### Timeline of Events and Anomalies in the Computerized Voting Era: 2000 - 2018<sup>1</sup>

Jonathan D. Simon

> **2000:** The “hanging chads” debacle in Florida not only is center-ring in the circus that leads to the election of George W. Bush to the presidency, but also conveniently sets the stage for the push to rapidly and fully computerize vote counting in the U.S.

> **2002:** Computerized voting gains a foothold in the wake of the Help America Vote Act, Mitch McConnell’s brainchild, fronted by the soon-to-be-incarcerated Rep. Bob Ney (R-OH) and passed with the support of Democrats won over by the promise of increased turnout. The VNS (network) exit polls are withheld from the public (ostensibly because of a system glitch), masking glaring disparities in at least several key contests, including the Georgia Senate (Cleland—13% swing from tracking polls) and Governor (Barnes), where unverifiable paperless DREs had just been deployed, and where software “patches” were inserted by Diebold shortly before the election in 22,000 DREs.<sup>2</sup>

> **2003:** Death of Raymond Lemme, official of Florida Inspector General’s Office charged with investigating the election rigging allegations made by Clint Curtis, in Georgia motel room ruled a suicide; Lemme’s body photographed with bruising and slash wounds consistent with battery; investigation shut down.<sup>3</sup>

> **2004:** Computerized voting achieves predominance, with DREs and Optical Scanner (Opscan) equipment counting more than 80% of the votes nationally. Ohio votes “processed” in Tennessee on the SmarTech “back-up” servers set up prior to the election by Karl Rove’s IT chief, Mike Connell, after the state

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<sup>1</sup> For an excellent “expanded” timeline of events, see Fittrakis R, Wasserman H: *The Strip & Flip Selection of 2016*, pp. 54 – 101, at <https://www.amazon.com/dp/B01GSJLW0I/ref>.

<sup>2</sup> See “Diebold and Max Cleland’s ‘Loss’ in Georgia,” by Robert F. Kennedy, in Miller MC, Ed., *Loser Take All: Election Fraud and the Subversion of Democracy, 2000-2008*. Brooklyn, NY: ig Publishing, 2008.

<sup>3</sup>See

[http://www.democraticunderground.com/discuss/duboard.php?az=show\\_mesg&forum=104&topic\\_id=5567680&mesg\\_id=5567680](http://www.democraticunderground.com/discuss/duboard.php?az=show_mesg&forum=104&topic_id=5567680&mesg_id=5567680).

servers operating under Secretary of State J. Kenneth Blackwell (Honorary Chairman of the Bush campaign) “went down” just after midnight. Exit polls showed Kerry the victor in Ohio. Following the SmarTech takeover, margin flipped as Bush “surged” ahead. Exit polls were “adjusted” accordingly.

Votecounts were red-shifted, relative to exit polls, in 11 of the 12 “battleground” states. The networks and pollsters hastened to discredit their own polls, though they had been accurate enough for decades to permit early calls of even the tightest contests. It was put forward that Bush voters were more reluctant to respond to the exit polls, though careful analysis revealed that the *highest* level of exit poll response was in Bush *strongholds* and the hypothesis didn’t fit the data. There was no evidence of “reluctant Bush responder” dynamics in noncompetitive states. And the pollsters, in offering the “reluctant Bush responder” excuse, ignored the fact that they had in any case weighted their polls to Party ID in such a way as to neutralize any such response biases. Keith Olbermann briefly covered the uproar in several successive programs, then went on a long unannounced vacation and dropped it cold.<sup>4</sup>

Death of Athan Gibbs Sr., Microsoft-backed inventor of Tru-Vote system to allow voter verification of ballots cast on computerized voting equipment. Gibbs, who was actively marketing his system, was killed when the car he was driving suddenly jumped lanes in front of an 18-wheel trailer.

> **2005:** Ohio election reform ballot proposition, leading by 28% in *Cleveland Plain Dealer* tracking poll on the eve of the election, was defeated by 25% when the votes were counted, an overnight net swing of 53% *statewide*; in the three other ballot propositions, the *Plain Dealer* poll was spot-on.

Death of Reverend Bill Moss, the lead plaintiff in the Ohio election challenge lawsuit *Moss v. Bush*, following an apparent stroke or aneurysm.

> **2006:** The capacity to manipulate proliferated while forensic tools grew more refined. The result is a measure of covert manipulation that was, or should have been, alarming.<sup>5</sup> There was a national red shift in the elections for the House of a total of 3 million votes relative to exit polls (there was a comparable red shift relative to tracking polls and a comparable red shift in competitive Senate

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<sup>4</sup> See Freeman S, Bleifuss J: *Was the 2004 presidential election stolen? Exit polls, election fraud, and the official count*. New York: Seven Stories Press, 2006.

<sup>5</sup> See [http://electiondefensealliance.org/files/LandslideDenied\\_v.9\\_071507.pdf](http://electiondefensealliance.org/files/LandslideDenied_v.9_071507.pdf); also reprinted in *Loser Take All*.

ances).<sup>6</sup> Of critical importance, this analysis could not be debunked on the basis of alleged exit poll sampling bias, because the sample was shown to be to the *right*, not the left, of the actual electorate.<sup>7</sup> The analysis was not challenged nor was an attempt made to refute it; it was simply ignored. Additional analysis revealed a “targeting” pattern, in which the more competitive a contest the more likely it was to be red shifted, a pattern pathognomonic of targeted rigging.<sup>8</sup>

Death of Warren Mitofsky—“father” of exit polling and head of Edison/Mitofsky, official exit polling provider for U.S. elections—of apparent aneurysm.

> **2008:** E2008 was an Obama victory and Democratic sweep. Many asked why the suspected manipulators would rig to lose? Again there was a massive red shift, in fact greater than in 2004 and 2006.<sup>9</sup> But, in both the 2006 and 2008 elections, unexpected 11<sup>th</sup>-hour events (in 2006 the Foley and related GOP sex scandals, in 2008 the collapse of Lehman Brothers and the subsequent economic crash) dramatically altered the electoral dynamics (in 2006, for instance, the Democratic margin in the Cook Generic Congressional Ballot jumped from 9% in the first week of October to 26% the week of the election, a Republican free-fall of epic proportions; a similar fate overcame McCain in the wake of the economy’s collapse). These political sea changes swamped a red shift that turned out in retrospect to be under-calibrated, and they came too late to permit recalibration and redeployment of tainted memory cards and malicious code.<sup>10</sup> These red flags were again ignored, trampled in the Obama victory parade.

Death of U.S. Congresswoman Stephanie Tubbs Jones, who had formally challenged the seating of the Ohio Bush electors following E2004, of apparent aneurysm while driving.

Death of Mike Connell, Karl Rove’s IT “guru,” in December crash of plane he was piloting. Connell had been compelled in November to give a sealed deposition in the *King Lincoln-Bronzeville vs. Blackwell* case, challenging the votecount of the 2004 Ohio presidential election in federal court, and was

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<sup>6</sup> This exit poll-votecount red shift of course does not account for the additional impact of voter suppression tactics, as voters who stay at home or are turned away from the voting booth are not exit polled.

<sup>7</sup> See “Landslide Denied,” cited in fn 5.

<sup>8</sup> See [http://electiondefensealliance.org/files/FingerprintsOfElectionTheft\\_2011rev\\_.pdf](http://electiondefensealliance.org/files/FingerprintsOfElectionTheft_2011rev_.pdf).

<sup>9</sup> See Charnin R., *Proving Election Fraud: Phantom Voters, Uncounted Votes, and the National Exit Poll*. Bloomington IN: AuthorHouse, 2010.

<sup>10</sup> Any attempt at such recalibration and redeployment on a scale large enough to be effective would have been a rather visible and highly suspicious undertaking.

expected to return to complete his testimony in January. Connell's widow, combing the crash site, found the earpiece to his Blackberry device, known to contain extensive email correspondence with Rove, but the device itself was never located.<sup>11</sup>

> **2010:** Republican Scott Brown's victory in the Coakley-Brown special election in Massachusetts put the Tea Party on the map, took away the Democrats' filibuster-proof Senate majority, and set expectations for a major move to the right in November. There were no exit polls, no spot checks, no audits, not a single opscan's memory card examined for malicious code: the result was a 100% pure, unadulterated, faith-based election, a *critical election that could have been stolen with virtually zero risk*. In the 71 jurisdictions where ballots were hand-counted, Coakley won.<sup>12</sup> In fact, statewide, there was an 8% disparity from hand-count to computer-count jurisdictions, a red shift in line with that measured in 2004, 2006, and 2008, and enough to reverse the outcome and avoid a recount. Analysts asked were those hand count jurisdictions more Democratic? They weren't, they were more Republican. Were they in Coakley's part of the state? They weren't; in her only other statewide race, a noncompetitive race, she did *better* in the opscan than in the handcount jurisdictions. Ultimately analysts examined and ruled out every benign explanation for the outcome-determinative disparity.<sup>13</sup>

The Massachusetts special election was followed by a Democratic primary in South Carolina that pitted a known and respected candidate (Judge Vic Rawl) against a cipher (Alvin Greene) who made no campaign appearances, had no website, was threatened with indictment on pornography-related charges, and lacked the personal funds for the election filing fee, which was paid anonymously on his behalf. The contest was for the nomination for U.S. Senate, and a November match-up with incumbent Republican and Tea Party favorite Jim DeMint, against whom Rawl had already closed to a threatening 7% in tracking polls. The votes were tallied on paperless DREs and Greene won with 59% of the vote. Rawl brought a challenge before the Democratic State Committee. Several election integrity experts testified, citing, among other gross anomalies, large disparities between early/absentee votes counted by opscan (where the ballots would at least in theory be available for comparison with the computer counts) and the DRE tallies. Greene did not appear. The Committee reacted favorably to Rawl's challenge throughout the hearing, then

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<sup>11</sup> See Worrall S: *Cybergate: Was The White House Stolen by Cyberfraud?* Amazon Digital Services, 2012, <https://www.amazon.com/dp/B0074NQ5UK/ref>.

<sup>12</sup> See Study IV.

<sup>13</sup> Ibid.

went into closed session and voted by an overwhelming margin to reject the challenge and close the matter.<sup>14</sup>

The November election was a great sweep for the Tea Party and the Right, with seismic implications for the nation. It seemed that the professionals at Edison/Mitofsky and the National Election Pool (NEP) still could not figure out how to get exit polls right because, once again, the red shift turned up everywhere: in the Senate elections (16 out of 18 competitive races red shifted); the Governorship elections (11 out of 13 races red shifted); and in the House (a total red shift of 1.9 million votes). In a telling comparison with 2006—when an election-eve Democratic margin of 26% in the Generic Congressional Ballot (“Whom do you intend to vote for in the election for U.S. House in your district?”) translated into a net gain of a mere 58 House seats by the Democrats—a Republican Generic Congressional Ballot margin of 9%, and an even smaller tabulated national popular vote margin of 6.8%, in E2010 translated into a net gain of 128 seats, a completely unprecedented “efficiency” ratio, and the “epic sweep” the media duly reported at face value.

The infrastructure needed for computerized election theft has become progressively more sophisticated and efficient. The off-site “processing” that is believed to have been pioneered in Ohio in 2004, has now been deployed in other key states. This mechanism allows *real-time targeting and calibration of manipulations*, which was not possible with pre-set, memory card-based rigs. Using the off-site processing scheme, aka “man in the middle attack,” votecounts can be altered surgically and elections stolen with a tidy numerical footprint. Election theft thus becomes increasingly difficult to detect—barring serious investigation of the off-site IP networks now processing many of the votes.

Compounding the forensic difficulties, forensic baselines—all except the surviving smattering of handcounts—are part of a feedback loop and are themselves being distorted to the right. The pollsters—under the imperative to *get elections right* or go out of business—have turned to a tunable fudge factor known as the Likely Voter Cutoff Model (LVCM), which skews their samples about 5-10% to the right by disproportionately eliminating from the sample members of left-leaning constituencies such as young, transient, poor, and non-white respondents.<sup>15</sup> Both exit polls and pre-election polls are now also weighted using demographic baselines, such as party identification, drawn from the “adjusted” exit polls of prior elections. Since these adjustments are always

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<sup>14</sup> See <http://www.bradblog.com/?p=7902>.

<sup>15</sup> See Study V.

to the right, to bring the exit polls to conformity with the vote counts, and because they carry the demographics along to the right in the process, *current exit polls and pre-election polls are further skewed to the right*. The unadjusted exit polls—themselves red-shifted by this weighting process but lacking the LVCM to complete the distortion—remain somewhat to the left of the vote counts, but the pre-election polls, with the combined distortions of false-stratification and the LVCM pushing them well to the right, manage to accurately predict the electoral outcomes in competitive races. Logically, such methodologically contorted polls can get election results consistently *right* only if those election results are consistently *wrong*.

The U.S. Supreme Court’s party-line 5-to-4 decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), defines corporate campaign contributions as protected “free speech,” gutting much of the framework for regulating or limiting such spending and opening the floodgates to a deluge of “dark money” when Congress fails to pass expected disclosure requirements.

> **2011:** In the Wisconsin Supreme Court election, another “proxy” election (cf. Coakley-Brown in Massachusetts the year before) with seismic national political implications, out-of-state funding poured in as Karl Rove emphasized the significance that the Republican’s victory would have. In spite of the election’s national significance, no exit polls were conducted. Many votes were tabulated on servers run by the storefront outfit Command Central, located across the state line in Minnesota. Apart from the 7583 votes (just enough votes to dodge a mandatory recount) discovered for the Republican candidate (found by a former employee of that candidate) the day *after* the election, there were major red-flag anomalies in returns, concentrated most strongly in Democratic Milwaukee and Dane counties, relative to established voting patterns, recent prior elections, and other races on the ballot.<sup>16</sup> The recount, demanded by the losing Democratic candidate, appeared to be even more corrupted than the election itself: bags of ballots were found by observers to be improperly sealed and frequently ripped open, in the very jurisdictions where the electoral anomalies had been identified. In the face of this widespread evidence that ballots had been swapped out to match the machine totals, objection after objection was lodged, duly recorded, and then ignored. The Democratic candidate ultimately bowed to pressures to concede, rather than pursue a grueling litigation before a partisan and adverse Supreme Court.<sup>17</sup>

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<sup>16</sup> For details of the forensic analysis, see <http://electiondefensealliance.org/files/MemorandumToLegalTeamRe.Milwaukee-final.pdf>.

<sup>17</sup> See <http://electiondefensealliance.org/files/IrregularitiesinWISupremeCourtElectionandRecount.pdf>.

There followed the State Senate recall elections in Wisconsin, and again strong anomalies emerged, this time complemented by a red shift in citizen-conducted exit polls that were admittedly of uncertain probative value. When it falls to citizen exit polls to provide the only check on secret vote counts on partisan-controlled computers, it is not surprising that the Carter Center, which monitors elections around the world, has determined that U.S. elections don't meet the minimum standards required for such monitoring. The Republicans won exactly the number of recalls needed to keep control of the Wisconsin state senate by one seat.

Having gained control of key state legislatures and governorships in the 2010 rout, Republican lawmakers and administrators, guided by the American Legislative Exchange Council (ALEC), waste little time in responding to the 2010 Census by gerrymandering the states under their control; passing restrictive and discriminatory Voter-ID laws; and adding a variety of other discriminatory burdens to the registration and voting processes.

> **2012:** The recall election for Republican Governor Scott Walker of Wisconsin was dubbed “the second most important election” of this presidential election year. Corporate cash and partisan luminaries floods into the state and all stops are pulled, particularly on behalf of the embattled, union-busting Republican Governor, who enjoyed an eight-to-one spending advantage over his Democratic opponent.

When the dust settled, Walker had won a surprisingly easy 7% victory, which was ascribed by the punditry to his massive *Citizens United*-enabled funding advantage and to the right-trending mood of the country.

What the media failed even to *footnote* was that the NEP exit poll had the race at 50%-50% (an exit poll weighted, we should not forget, to right-shifted Party ID demographics drawn from the right-adjusted exit polls of recent prior elections). This exit poll was as “official” as any conducted on November 6<sup>th</sup> for the general election: same outfit (Edison/Mitofsky), same methodology, same large sample. What was curious is that, if you had looked for it on Election Night, you would have found it in only one place: online briefly (before it was adjusted to match Walker's 7% margin) at the Milwaukee *Journal-Sentinel's* website. You would not have found it posted on any network, though the networks certainly were looking at that poll because they all came out talking about a “deadlock” and “a long night ahead.” Until *about 15 minutes later* it suddenly morphed into “an easy Walker win” and “yet another triumph for the politically born-again Karl Rove,” and “a grim prospect for the Democrats.” The networks commissioned and paid for that exit poll and then decided, one and all, to withhold it from public view (the Milwaukee *Journal-Sentinel* either did

not get the message or brazenly decided to ignore it). Because it was impossibly far “off”—at least relative to the votecount, which must be “on,” else this is not America.

While the public battle has raged over Voter ID and “voter” fraud, no media attention has been accorded to continuing, indeed intensifying evidence of covert electronic fraud. An egregious but typical omission was an analysis, covered by the press in the U.K. but predictably ignored in the U.S., by Michael Duniho (retired National Security Agency analyst), Francois Choquette, and James Johnson, who examined election returns from the 2012 Republican presidential primaries. The authors found a consistent pattern: after controlling for all other factors, such as urban/rural differences, Mitt Romney’s share of the vote increased, and his opponents’ shares decreased, as the *size* of the precinct where the votes were being counted increased.<sup>18</sup>

This pattern, disclosed by Cumulative Vote Share analysis (“CVS”), is not “naturally occurring;” that is, it is not found in “ordinary” elections that would not be targets for rigging. In *those* races, when voteshare is plotted against cumulative votes cast by increasing precinct size, the slope is a flat line; there is *no correlation* between voteshare and precinct size.

The authors could find *nothing* to account for the Romney “upslope” pattern other than the selection by a rigger of larger precincts as safer places to shift votes without arousing suspicion (100 votes shifted in a precinct of 1000 total votes cast will pass the smell test; the same 100 votes stolen in a precinct of 250 total votes will not). In primary after primary throughout the bruising Romney run to the nomination the analysts found the same pattern. They then extended their analysis to suspect races as far back as 2008 and picked up essentially the same red-flag pattern for these elections, including an overall shift of up to 10% from Democratic to Republican in key contests such as the Coakley-Brown race in Massachusetts.

Obama’s “reassuring” re-election victory is likely a result of covert intervention by the group Anonymous, which, having infiltrated Rove’s ORCA operation, locked his operatives out of their own servers. Ohio’s own official servers “go down” at 11:13 pm (cf. E2004) while Rove, in a bizarre on-air “meltdown,” disputes the call of Ohio and the election for Obama by his own employer, FOX News. In addition to the actions of Anonymous, a lawsuit filed the day before the election, challenging the placement of “experimental” software patches in

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<sup>18</sup> See [http://www.themoneyparty.org/main/wp-content/uploads/2012/10/Republican-Primary-Election-Results-Amazing-Statistical-Anomalies\\_V2.0.pdf](http://www.themoneyparty.org/main/wp-content/uploads/2012/10/Republican-Primary-Election-Results-Amazing-Statistical-Anomalies_V2.0.pdf).

44 Ohio counties and on the state’s election website, has been credited by some with thwarting the planned manipulation of E2012.

> **2013:** The U.S. Supreme Court, by a party-line 5-to-4 decision in *Shelby County v. Holder*, 570 U.S. 2 (2013), guts the restraints imposed by The Voting Rights Act of 1965, freeing nine states with a Jim Crow history of franchise discrimination to change their election laws without federal review. As in the wake of *Citizens United* (2010), Republican legislatures and administrations in these states waste no time in passing a swath of discriminatory procedural laws and regulations targeting minorities and other Democratic constituencies. Many of these provisions face legal challenge and are ruled unconstitutional by the courts.

> **2014:** Carrying a single-digit approval rating, *the lowest in history*, the Republican-led Congress *gains* seats in E2014. Of 222 Republican House incumbents who stand for re-election, *two* are defeated, a re-election rate of better than 99%; Republicans take control of the Senate and gain 13 House seats overall. This astounding result is reflexively attributed by pundits to “low turnout” among Democratic and progressive voters. Yet, across a wide swath of states, progressive ballot propositions, strongly opposed by these same Republican candidates, are passed by wide (i.e., rig-proof) margins. The question of how these results square with the “low turnout” hypothesis is never answered. Nor is a pervasive red shift deemed at all remarkable.

The U.S. Supreme Court, by yet another party-line 5-to-4 decision in *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014), removes all restrictions on aggregate corporate campaign contributions. The Court was aware, by the time of *McCutcheon*, that Congress had failed and would fail to pass any disclosure requirements that the Court had anticipated in the wake of its *Citizens United* decision. Thus the Scalia bloc decides *McCutcheon* fully aware that it is ushering in an era in American politics not just of dark (i.e., undisclosed) money, but of *unlimited* dark money.

> **2015:** The Harvard Electoral Integrity Project ranks the United State 45<sup>th</sup> among fully developed democracies in election integrity. The “Beacon of Democracy” places immediately between Mexico and Colombia.

> **2016:** Political anger, distrust, disgust, and nihilism are the hallmarks of the E2016 campaign. The word “rigged” is brought into common usage (and misuse) by Donald Trump, and that impression of the electoral process is bolstered by a variety of visible tactics appearing to place thumbs of significant weight on the scales in favor of certain candidates. The perception of unfairness is particularly strong among supporters of the Sanders candidacy, a nearly

successful bid astoundingly funded almost entirely by individual as opposed to corporate donors. But it is Trump's warnings of a rigged November that reflect most ominously what happens when vote counting is unobservable and trust in the process has broken down.

Although Trump prevails in what appears to be a fair Republican nomination battle, the Democratic battle is riddled with uncanny numbers and patterns that accrue to the benefit of Clinton. Among those patterns: the radically divergent performance of the candidates in caucuses (where vote counting is observable and Sanders routs Clinton) vs. primaries (where vote counting is computerized and unobservable and Clinton bests Sanders); the radically divergent performance of the exit polls in the Republican primaries (where they are within expected error levels) vs. the Democratic primaries (where they are far outside expected error levels and virtually unilateral in their shift); and the odd reverse-shift of Oklahoma, the only primary state where the voting computers are programmed mainly by the *state itself* instead of the *vendors*.

Trump's alarms about "rigging," echoing those of Sanders supporters and election integrity advocates, were therefore, while undeniably both scatter-shot and self-serving, neither as irrational as portrayed by the media nor lacking in evidentiary basis.<sup>19</sup> Trump does break new ground in responding to the question whether he would accept the legitimacy of the election if he lost it. He demurs, raising the prospect of post-election chaos. A few other candidates had prepared in advance for trouble, most notably John Kerry, who in 2004 had raised a fund of \$15 million for post-election legal challenges, of which he then chose not to spend a penny. But there is not much doubt that Trump would not follow suit and graciously accept results about which he had any reason, evidence-based or otherwise, to be suspicious.

This scenario does not materialize and Clinton loses no time conceding, in spite of Trump's improbable table-run of virtually every battleground state, most by

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<sup>19</sup> Others echoed the hue and cry. Most eye-opening was an article by Roger Stone, one-time Trump advisor, veteran of Republican campaigns dating to the Nixon years, and NY *Times* best-selling author: "Can the 2016 election be rigged? You bet," at <http://thehill.com/blogs/pundits-blog/presidential-campaign/291534-can-the-2016-election-be-rigged-you-bet>. Stone writes:

"Both parties have engaged in voting machine manipulation. Nowhere in the country has this been more true than Wisconsin, where there are strong indications that Scott Walker and the Reince Priebus machine rigged as many as five elections including the defeat of a Walker recall election. . . . The computerized voting machines can be hacked and rigged and after the experience of Bernie Sanders there is no reason to believe they won't be."

Out of the mouths of babes (and operatives).

a whisker, while losing the popular vote by nearly 3 million votes; and in spite of reports from the field of targeted voter suppression, computer breakdowns, a red-flag pattern of red-shift exit poll disparities, and concerns about vulnerabilities to foreign interference (which at that point had not been publicly presented).

It is left to Green Party presidential candidate Jill Stein, a recipient of just over 1 percent of the popular vote, to pursue recounts in three battleground states—Wisconsin, Michigan, and Pennsylvania—in which Trump’s combined victory margin was a mere 77,744 votes, or about one half of one percent of the votes cast in those states. Stein, facing a series of deadlines, as well as inflated charges threatening to derail her efforts, succeeds in raising over \$7 million in less than a week’s time, in individual contributions averaging \$45. Her campaign is thus able to file for recounts in WI, MI, and PA, though the high fees demanded by these states (a good part of which are eventually refunded to the Stein campaign as unnecessary) make it impossible to pursue recounts in Florida and North Carolina, two other Trump razor-thin table-run states flying forensic red flags.

Various other barriers are relied upon and tactics employed to effectively thwart each of the three recounts. In PA, most of the votes were cast on unrecountable DREs; recounts, where possible, are impeded by a requirement for three petition filings from every one of the state’s 9,000+ election districts; in litigation brought by Stein, a Bush-appointed federal judge ruled that it “border[ed] on the irrational” to suspect hacking of the unauditible, unrecountable computers might have affected the election outcome. In MI, ballot bags found torn or tampered with are ruled ineligible for recounting, and the courts ultimately halt the recount on the grounds that Stein has no chance to win, even if votes had been miscounted. In WI, a Republican judge leaves it to each county to choose whether to recount manually or just run the ballots through the same machines that provided the initial count; and Stein was charged a fee more than five times that charged for a fully manual statewide recount in 2011; over 40% of Stein’s payment is ultimately refunded, too late for meeting the recount deadlines of other states or funding appeals of rulings blocking the counts. Stein is pilloried in much of the media for undertaking the recounts as a for-profit scam. The results of the partial, selective, and thwarted recounts are taken as proof that no potentially outcome-altering miscounts had occurred.

> 2017 Trump’s campaign pursued legal action to block each attempted recount but the candidate himself, as president-elect, immediately levels charges of fraud: “voter fraud.” Seemingly unable to accept or tolerate his nearly 3 million vote loss nationwide, Trump alleges that it was caused by “millions of illegal voters” voting against him—either noncitizens voting illegally or legal voters

illegally voting multiple times. Repeated investigations have found no evidence of this “voter fraud” phenomenon, but Trump hastily assembles an “Election Integrity” commission to get to the bottom of it all—chaired by Vice President Mike Pence and Kansas Secretary of State Kris Kobach, the voter-suppression czar whose “CrossCheck” operation uses a data-matching algorithm patently aimed at the purging from the voter rolls of millions of *legal* voters. The commission, stacked with Republican heavyweights, predictably finds nothing, is sued for its utter lack of transparency, and is quietly disbanded by Trump—without issuing a report, but not before making a controversial gambit to obtain confidential voter-registration and personal data from every state—nearly all of which refuse to comply.

From the beginning of his presidency, Trump’s approval ratings sit at record lead-balloon lows, reflecting both the extreme polarization fostered by his campaign and the failure of that campaign or of his post-election activities to win support outside his hardened “base.” His inauguration, and the lies he insists on telling about its sparse attendance, set the tone for the steady spew of lies and the virtually ceaseless tumult that have marked the Age of Trump. Truth, ordinarily a casualty of war, is now a casualty of a psychological war—waged on the American media, governmental institutions, law, body politic, and the public itself by a man who appears capable of sacrificing the world to be a “winner” and avoid the scourge of deep-embedded shame. Although “politics” becomes too “dangerous” for discussion over dinner for a time, little by little, scandal by scandal, sacking by sacking, blurt by blurt, tweet by tweet, depravity by depravity, and lie by lie, the desperate longing for rescue from this nightmare among an extraordinary swath of the population becomes palpable. There are petitions, protests, parades, and of course the polls—but, with the GOP leadership showing no sign of moving against a president who they finally grasped was a plutocrat masquerading as a populist—the focus turns inevitably to E2018. Trump opponents—from environmentalists to immigrants, from #MeTooers to the Marchers for Life, from those who value knowledge and science to those who simply value basic honesty, from those disgusted by corruption to those disgusted by bullying, from those terrified by an impulsive and transactional foreign policy to those still waiting for the buck to stop within a thousand miles of a leader constitutionally incapable of taking responsibility for any failure or shortcoming—begin to look to the midterms almost literally for salvation, making E2018 the most critical election in living memory.

Naturally then, every electoral tea leaf is scrutinized for any hint of what awaits when the public is permitted its first Age-of-Trump national right of review. What the verdict will be is far less clear than the story told by the polls—which is that Trump, even at his “peak” is historically unpopular and, because

sentiments are running historically high, indeed historically reviled. But polls can be “off”—though the chances for that when all but one or two acknowledged outliers like Rasmussen are in general agreement are very small—and things may, of course, change.

2017 starts out with a run of (narrow) Republican wins in special elections for vacant seats, culminating in the most expensive U.S. House election in history, in which \$50 million was poured into Georgia’s 6<sup>th</sup> congressional district race. Bright forensic red flags fly as, first in the preliminary election and then in the run-off, highly suspicious events and anomalies combine to, by the narrowest of margins, keep the seat in Republican control. The extraordinarily high expense level reflects not the contest’s strategic importance (a Democratic win would have put only the smallest of dents in the Republican House majority) but its symbolic importance as a proxy for the impact of the first half year of Trump’s presidency on national politics. Because the district had been solid congressional red territory, a win by the Democratic candidate, Jon Ossoff, would have been a result of utmost embarrassment to Trump and a black omen for the president and the GOP going forward.

In the preliminary round in April, a server shutdown and reporting hiatus reminiscent of Ohio 2004 is implicated in bringing Ossoff just below the 50% of the total vote level necessary for outright victory and putting him into a runoff with the top Republican finisher, who receives 19%. Then in the run-off between the two in June Ossoff wins the verifiable mail-in vote by a margin of 28% but is defeated in Election Day voting (which is counted by unverifiable paperless touchscreens) by 16%, losing overall by 3.6%.

This pattern is so improbably bizarre that forensics analysts search for a “benign” explanation for the anomaly (e.g., do GA-6 Democrats tend more than Republicans to vote by mail?), but are able to find nothing. The Ossoff campaign shows no interest in challenging but, as part of a lawsuit filed by election integrity advocates seeking to decertify the paperless computers going forward, production and examination is sought of the servers programmed by the Kennesaw State University Elections Center to record and count the votes. It is subsequently discovered that, three days after the filing of this suit (in fact over the July 4<sup>th</sup> weekend), the server was scrubbed clean (apparently using a high-gauss “industrial” magnet) by the Election Center, deleting all code and data and destroying the only available “hard” evidence capable of shedding light on the counting process and egregious anomalies.

The Ossoff loss appears to mark a turning point, after which Democratic fortunes improve. They begin chalking up wins in the scattered down-ballot special elections and roll to decisive wins in the off-off-year general election in

November. They take the governorships of Virginia (where the state had decided to ditch its paperless DREs and replace them with paper ballots counted by opscan) and New Jersey (where outgoing Governor Chris Christie's great unpopularity ensured that the Democratic margin of victory would not be close). In both cases, the ubiquitous "red shift" disappears, as exit polls (which "always" overcount Democrats) suddenly stop overcounting Democrats.

Many interpret the Democratic wins not only as the footstep of doom for Trump and the GOP in E2018, but as a clear indication that election theft is either a fantasy or a thing of the past. There are compelling strategic reasons, however, for refraining from manipulating this set of elections for the benefit of Republican candidates.<sup>20</sup> These strategic considerations make it highly likely that all these "drop in the bucket" elections, up through the victory of Democrat Conor Lamb over Trump-supported Republican Rick Saccone (PA-18) in March 2018, were left alone.

The U.S. Senate special election in Alabama, pitting the controversial and scandal-plagued far-right Republican Roy Moore against Democrat Doug Jones is *sui generis*. Jones' victory in December 2017 is taken by many at face value as a triumph of #MeToo and more trouble for Trump and the Republicans in E2018. Some, having noted several strange anomalies accruing to the benefit of Jones, suggest that the Democrats have finally learned the art of computerized election theft. Given, however, the equipment used and the administrative control exercised by Republicans in this state, the opportunity for Democrats to manipulate votecounts is slim to none. Returning to the caveat that the beneficiary of meddling may well not be its perpetrator (see, e.g., Clinton in the 2016 primaries), a few analysts read Alabama very differently. To begin with there is a substantial exit poll-votecount *blue* shift, putting the lie to the standard rationale for discrediting exit polls, which is that they "always overcount Democratic voters." Then, screenshot of the rolling vote totals reveals a late-evening "glitch" in which, without any increase in the number of precincts reporting, vote totals increase such as to reduce Moore's margin from 7,039 to 133 votes. This anomaly so closely resembles the pattern seen in the Ohio count in E2004 (where major shifts in vote totals accompanied a late-evening "glitch") that it suggests a "fingerprint match." And indeed, when taking into account the factors that effectively reverse the rooting interests for this particular election (Moore, a certain E2018 albatross, is the last man McConnell and the GOP leadership want to see in the Senate; he is, moreover, "Bannon's guy," and

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<sup>20</sup> See Simon, J: "What an Honestly Counted US Election Might Look Like," at <https://www.mintpressnews.com/election-2017-what-an-honestly-counted-us-election-might-look-like/234586/>.

Bannon has made himself Rove and McConnell’s mortal enemy), it is no stretch to see that, for once in a way, it is the *Democratic* candidate who would be the expected beneficiary of the meddling suggested by the anomaly noted above as well as by anomalous precinct-level patterns found on deeper drilldown.

> **2018** The working narrative is that the “Russians” “meddled” in the 2016 election. Who the Russians are and what they did (specifically) are less clear. But the working hypothesis is that whatever they did in 2016 they plan to do again (at least) in 2018. There appears to be genuine uncertainty, bordering on anxiety, about the vulnerability of E2018—that is, whether it will be meddled with and, if so, how. This state of affairs is progress (of sorts) in the quest for election integrity.

“Meddling” is generally sorted into three categories of interference, ranging from the least to the most direct. The first “tier” consists of efforts aimed at altering voter behavior—whether changing voters’ preferences or causing would-be voters to stay home or would-be nonvoters to vote. It is not clear whether spreading disinformation per se is illegal (campaigns get away with it all the time). Ordinarily a certain degree of *caveat auditor* and “consider the source” applies to such messaging but, in the “Information Age,” sources can be as easy to disguise as news is to fake. In any case, there is a bad odor when foreigners are found to influence our election outcomes even in this most indirect of ways. Thirteen Russian nationals are accordingly indicted, though they are effectively beyond the reach of the Special Counsel investigating the Russian interference in E2016 and possible involvement (i.e., collusion) of the Trump campaign in such activities. The mining—by Mercer-funded Cambridge Analytica—of the personal data of tens of millions of Facebook users, at least in part to target political messaging on behalf of the Trump campaign, raises the specter of a different sub-species of Tier-1 meddling.

The second tier involves interference with the vast voter eligibility infrastructure. It was reported that more than 20 state voter databases had been targets for Russian hackers and that they had been successful in at least three states. What “successful” meant, what impact the hackers may have had in suppressing the vote was, again, not made clear by federal or state investigators. But with voter registration databases and poll books becoming ever more computerized, the risks are growing for legal voters to find themselves targeted and turned away or relegated to provisional ballots on Election Day. Subverting the registration and eligibility processes can potentially wreak havoc on the voting process and/or serve as a targeted weapon of voter suppression and disenfranchisement.

The third tier—the most direct vector for meddling—is of course interference with the vote counting process itself. While the Department of Homeland Security hastened to assure (and reassure) the public that they found no evidence that E2016 votecounts or electoral outcomes were affected by the various attempts at meddling (you have to dig a bit to discover that they found no such evidence because they made a decision not to look for any), there is an undisputed ground fog of concern socking in E2018 when it comes to what might go bump behind the cybercurtain. Might the Russians come again? Might they bring their big cyberguns and hit our opscans, DREs, or central tabulators? How would we know if they did? How can we stop them? Or do we just punish them afterwards with some sanctions, which seemed to be enough to fit the 2016 crime, whatever it was?

These questions are apparently enough to spur a bit of congressional interest, in the form of a \$380 million appropriation to “upgrade” America’s voting equipment, though neither paper ballots nor audits are mandated, and the funds (less than 10% of the original HAVA funds) are grossly inadequate to secure E2018 against foreign hackers, let alone malicious domestic operatives and insiders. It is clear that the legislative process, in Washington and the key states, will not deliver necessary protection to the electoral process. The Supreme Court (Gorsuch batting for Garland) reluctantly reconsiders partisan gerrymandering—arguing over the proper care and feeding of a horse that left the barn years ago and is romping somewhere in the next county.

We appear yet again to be headed for a disquieting November and a disquieting electoral future. The last time I wrote this, we landed in the Age of Trump, the shocking culmination (to this point) of the computerized vote counting era. It is hard to fathom how our nation could have gotten there without thumbs, overt and covert, on the electoral scales. If we harbored any doubts, we now know that elections, honest or rigged, *matter*. Unobservable vote counting has reached a predictable crisis of confidence and our entire political system has reached a predictable and parallel crisis of confidence after just 15 years of computerized elections. The window for reform is narrow. Our democracy, resilient as it may seem, is mortal.

## STUDY VIII.

### The Flat-RLA Hybrid Election Audit

Jonathan D. Simon, Election Defense Alliance

#### Abstract

With audits increasingly coming into focus as a necessary tool for securing and restoring trust in the U.S. vote counting process, developing a template for an audit process that is both conceptually sound and capable of readily being understood and executed in the field is a critical priority for electoral reformers.

Risk-Limiting Audits (RLA)—which peg the size of the audit to a contest’s margin of victory—have received much positive consideration, and have now been adopted by several states.<sup>1</sup> A number of other states continue to employ “flat” audits, sampling a fixed percentage of ballots or precincts.<sup>2</sup> Many states, however, continue to run elections that are either unaudited or ineffectually audited.<sup>3</sup>

The Hybrid proposal presented here combines the relative simplicity of a flat audit with the precision and labor-saving features of the RLA.<sup>4</sup> It would allow a flexible and effective standard to be written into audit legislation and executed simply and straightforwardly—without increasing reliance on yet more computerization or experts—in the often messy real-world that is Election Night.

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<sup>1</sup> See, for example, Colorado, at <https://www.denverpost.com/2017/11/22/colorado-election-audit-complete/>.

<sup>2</sup> See, for example, Massachusetts, at <https://www.sec.state.ma.us/ele/elepostelection/postelectionidx.htm>.

<sup>3</sup> Thirty-three states have no audit or inadequate audit provisions, according to the Center for American Progress (<https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/>).

<sup>4</sup> For a detailed explication of the RLA protocol, see <https://www.eac.gov/assets/1/28/Risk-Limiting%20Audit%20Report%20-%20Final%20.CO.pdf> and <https://www.stat.berkeley.edu/~stark/Preprints/gentle12.pdf>.

## Why audits are “in”

There is a clear parallel between the lessons we are learning about computerized voting and the lessons we are learning about living more generally in a “cyber-world.” In each case the “gift” seemed to be “free,” ours for the taking—convenience, speed, ease, expansion of possibilities. In each case we are learning, in relatively short order (though even the brief delay may well have tragic consequences), the substantial hidden costs: in the case of life in the cyber-world, the great costs associated with theft of information and identity; in the case of computerized voting, the concealed counting of votes in the pitch-dark of a privatized cyberspace, the great costs (to democracy, anyway) associated with theft of elections. Protecting identity and protecting elections are major problems with different potential solutions—but neither one is likely to be doable “on the cheap.” And both will require a significant adjustment of behavior and expectations.

Several other nations—including Germany, Ireland, The Netherlands, and most recently Norway<sup>5</sup>—have, in response to concerns about security and fraud, returned to public, observable vote counting in the form of hand-counted paper ballots (HCPB).

Because, however, the United States is not a parliamentary system and because its elections therefore typically involve much longer ballots with more contests to count than in these other nations, HCPB have been viewed by virtually all U.S. election administrators as impractical. The public has long been sold on convenience, speed, and entertainment (“Decision 20XX” as a kind of media extravaganza—a Super Bowl of American politics—dependent upon having results by bedtime in every U.S. mainland time zone), and there are massive inertias impeding such a fundamental change in the Election Night ethos as HCPB would entail.

The question thus arises whether any counting and verification processes short of HCPB might be relied upon to secure and protect U.S. elections and restore both public sovereignty and public trust. The first and most obvious step would be eliminating counting processes that are not subject to any form of verification—essentially the Direct Recording Electronic (DRE) method that involves no paper at all.<sup>6</sup> Such votes, which still represent nearly a quarter of all

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<sup>5</sup> See <https://thebarentsobserver.com/en/life-and-public/2017/09/norwegian-votes-be-counted-manually-fear-election-hacking>.

<sup>6</sup> Add to that computerized Ballot-Marking Devices (BMD), that convert voter choices into barcodes that are then read and counted by a scanner. Currently being hawked by several established vendors, such as ES&S, such BMDs somewhat sarcastically produce a “paper ballot,” but of course one that no voter will be able to verify as having

votes in the U.S., are cast on “touchscreen” computers and can neither be audited nor recounted by any method other than asking the computer to “have another go” and spit out the exact results it presented the first time. DREs are regarded by virtually every cybersecurity analyst as an open invitation to undetectable manipulation and fraud.<sup>7</sup>

Ditching the DREs is obviously necessary but, perhaps less obviously, insufficient. Many have been lulled into the belief that simply having “paper”—capable of being manually audited, or recounted if necessary—is an adequate safeguard. There are two major reasons, however, that this is a false security.

First, recounts are a poor approach to verifying and protecting elections: they are expensive—often beyond what candidates in the financially-depleted post-election period can afford—and burdensome. Beyond these impediments are the chain-of-custody issues that arise when a second count takes place days or weeks after the first count. It is very difficult to secure all ballots and prevent ballot substitution, as several recent recounts featuring torn, unsealed, and misnumbered ballot bags have illustrated. Finally, where either mandatory or elective recounts are pegged to a “close” election within a certain margin of victory—often as low as 0.25%; in California an absurd 0.015% is the threshold for state-funded recounts<sup>8</sup>—it stands as an invitation to manipulators to simply shift enough votes to exceed that margin.

Second, experience has shown that audits are too often weak and toothless, and too often set up with the specific intention of “checking the function of the machines” (that is, do they spit out the same result twice?) rather than verifying the count of votes. The absence of a well-designed audit protocol that can be uniformly applied and made subject to public observation and review is an egregious flaw in our current electoral process and one that must be addressed in any proposals for reform. Without an effective audit process, the “good news” that an election is to be conducted “with paper” is really a form of “fake news”: it is rather useless for an election to be *auditable* if it is not in fact effectively *audited*.

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recorded his or her vote (for the defeat of one such bill, see <http://gwmac.com/barcode-voting/>).

<sup>7</sup> See <https://www.csoonline.com/article/3099165/security/a-hackable-election-5-things-you-need-to-know-about-e-voting-machines.html>.

<sup>8</sup> See <http://www.sos.ca.gov/elections/statewide-recounts/statewide-recounts-faq/>.

### **What an effective audit does and does not have to do**

Before turning to the specifics of this Hybrid Audit proposal, it will be useful to set forth guidelines for any form of successful election audit. Each of the following is a requirement for an effective, trustworthy electoral audit process:

1. All votes in the venue (state, CD, etc.) must be on paper ballots available for human review.
2. All aspects of the audit—including ballot selection, counting, computation, and posting of results—must be performed observably, in public view.
3. Selection of ballots to be audited must be made by random process.
4. If the audit is designed to sample by *precinct*—that is, to employ a full count of ballots at a certain percentage of a venue’s precincts—then the random selection of precincts must be made at the close of voting, with no prior “telegraphing” of sites to be audited.
5. The audit must be completed on Election Night, before the ballots are stored or removed from the places where cast—including the collection sites for early and mail-in voting.
6. The audit must be conducted by local election administrators and open to observation by, at minimum, one designated representative of each major party and one representative of voters not affiliated with either major party.
7. The audit must be *sensitive* enough to detect outcome-affecting mistabulation of votes and *selective* enough to distinguish between such actionable fraud or error and the minor, non-outcome-affecting counting errors, or “noise,” inevitable in any large-scale counting process.
8. The audit must *specify* an “escalation” process, whereby, if the results of the initial audit disclose vote-count-audit disparities exceeding established accuracy parameters, provision is made for expanding the audit, up to and including a full manual count of the ballots.

It should be apparent that the burdens of time and effort are significant, both for those conducting and for those observing the audit process. With the alternatives to the audit approach being either a full hand-counting process or an unverified counting process taking place in the pitch-dark of cyberspace, a fundamental choice must be made about the value of secure and verified elections.

For those who despair that “in the wild”—in the messy, at times chaotic world of Election Night—audits will too often fall short of the standard of perfection seemingly set out in the eight points above, there is a bit of good news. Electoral audits are designed to detect significant and impactful mistabulations—those that jeopardize the “who won?” outcome of elections. But an audit will also have done its job—and done it well—if it manages to *deter* bad actors from interfering with the vote counting process with the aim of altering outcomes.

For this purpose, audits need not be perfect in fact. They need to be strong enough and sound enough to pose a serious and significant *threat* of exposure of any deliberate manipulation of the vote counting process with potential to alter electoral outcomes. Once such an interference is exposed numerically by the audit, it is then up to the investigatory process to pinpoint and prosecute its source. This is a risk rational would-be election thieves would not be inclined to take.

By making it part of the risk/reward calculation of any such bad actor, the audit would have served its fundamental purpose of protecting each election from interference and theft—whether by outsiders hacking into the computerized process or by insiders programming mistabulation into the process “at the factory.” So, while an audit can’t be so slipshod in design or execution as to be subject to compromise by the very same forces that would seek to subvert the democratic process through the mistabulation of votes, if it is designed and conducted in good faith and in adherence to the basic requirements set forth above, it will work as a powerful tool to secure our elections from meddling.

### **Issues with each of the main audit approaches: RLA and Flat**

Election audits can be divided into two major categories: 1) sampling ballots, and 2) sampling precincts.

The ballot sampling approach treats all ballots for a given contest (e.g., statewide, congressional district, state assembly district, etc.), however and wherever cast, as if they were collected in one big bucket, from which a representative (i.e., random) sample is drawn and counted. The results of that count (i.e., the percentages for each candidate in a contest, or Yes/No on a proposition) are then compared with the computed votecounts for that contest and a determination made whether the election “passes.”

The precinct sampling approach, instead of treating all ballots as collected in one bucket, considers them as discrete batches (precincts) and chooses a certain percentage of those batches (precincts) at random for auditing. In most cases, when a precinct audit is performed, it functions something like a *spot check*,

which is to say that the comparison made is between the computer count and the hand count of all the ballots *in that precinct*.

Although it is possible to treat the random selection of precincts as representative of the jurisdiction (e.g., state, CD) as a whole, and thus compare the aggregate audit tally with the votecount for the entire contest, this approach introduces certain complexities into the sampling process, such as the fact that precinct size must be taken into account in order to generate a precinct sample that is representative of the jurisdiction as a whole. Because a given precinct will often have strong partisan character, a small sampling of precincts, even if random, risks a significant partisan skew.

Audits can further be categorized as “flat” or “risk limiting.” In the flat audit a pre-set percentage of either ballots or precincts is sampled; in the risk-limiting audit (RLA), that percentage varies and is determined by the margin of victory in the contest being audited (note that for the purposes of this presentation, only binary elections between two candidates [or Yes/No on a proposition] are being considered—with suitable modification, the principles can be applied to multi-candidate contests). With RLAs the larger the margin of victory, the smaller the sample generally needed to confirm it—and this holds true whether sampling ballots or precincts.

Although the precinct sample—or “spot check”—approach is obviously the more convenient, its efficacy has often been called into question. In theory, what amounts to pulling the ballots out of a scanner storage bin, manually counting them, and comparing that count with the machine tally, should provide a check against machine counting error whether that error is the product of a “glitch” or of fraud.

In practice, there are several problems that may compromise the capacity of the audit to detect fraud. The first involves the selection of precincts, in particular the “cherry-picking” of precincts known to be fraud-free for auditing (e.g., Ohio 2004, where “cheat sheets” were provided to ensure that audit and votecount numbers matched<sup>9</sup>). The second involves the problem of timing—the interval between the selection of precincts and the performance of the audit is a time during which ballot substitution and/or scanner recalibration can be performed. The third involves the fact that precinct spot checks do nothing to verify the aggregation process above the precinct level, so that if the fraud is in the central tabulators it will likely go undetected.

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<sup>9</sup> See <https://www.motherjones.com/media/2005/11/recounting-ohio/>.

While there is no question that contest-wide ballot sampling is the stronger and less fallible approach, its logistical challenges should not be underestimated. It is by no means undoable. But it behooves us to be realistic about what it entails—especially if mandated to complete the audit rapidly after the close of voting, before ballot chain of custody issues develop (a choice also has to be made about whether to audit the whole ballot or more selectively—this will make a major difference in the overall burden). Whatever the sampling rate, this approach necessitates having both sampler/counters and observers deployed to every place where ballots are gathered (precincts, mailbags, etc.; it should be noted here that, where the scanners produce “digital ballot images,” it may provide an opportunity for off-site auditing, which would greatly facilitate the process, though some have expressed concern about the digital chain-of-custody issues raised by reliance on such ballots images). That's a lot of peoplepower in the real world and a lot to organize and worry about—and also a lot of potential for dispute and conflict, particularly if any unnecessary complexities are introduced into the protocol.

### **How the new Flat-RLA Hybrid audit works**

The Flat-RLA Hybrid Audit presented here was developed with the aim of simplifying the protocol, reducing confusion and potential conflict in the execution of a ballot-sampling audit, without sacrificing either its sensitivity to fraud or selectivity regarding noise.

It turns out that for the vast majority of contests bearing national significance (statewide, congressional, and even most state legislative races), the *size* for a flat, random sample of ballots is one of the *less* important choices. In fact, for statewide and congressional contests, a 1 percent sample will generally suffice. State legislative contests—depending on the size of the district—may ultimately require a larger sample, but we will see that this “escalation” process is built into the Hybrid Audit design.

Of far greater importance than sample size is the selectivity/sensitivity issue—or knowing when an audit result is a red flag that requires an escalated sample, full recount, or some such investigation. This is where bringing in the “risk-limiting” concept works. To conduct an RLA (as proposed by Berkeley Professor Phillip Stark and others) generally requires a recursive algorithm to determine the percentage of ballots to be sampled. In essence, you keep going until the count of sampled ballots guarantees accuracy of the initial (computer)

count to within an acceptable and pre-determined level of confidence.<sup>10</sup> As a result, the percentage of ballots to be counted will vary and a separate sampling be necessary for each contest on the ballot, leading to complexities and potential problems in execution. It is fair, based on observation and experience, to say that Election Night administrators and workers want *routines*—the less variation, the better.

The Hybrid Audit developed from the insight that you can conduct a flat audit and build the risk-limiting concept into the escalation provision. *The way to do this is to peg the "accuracy threshold" of the audit—that is, the acceptable percentage disparity between votecount and audit margins of victory—to the votecount margin of victory (VMOV).*

The audit legislation can provide, for example, that if the audit margin of victory (AMOV) is less than *half* the VMOV, that will trigger escalation. Note that we do not care about *any* situations in which the AMOV is *greater* than the VMOV—we're concerned here (in simple binary elections) strictly about who won, not by how much.

I cannot emphasize this point too strongly. With apologies to any "purists" in the room, pragmatism must prevail in this enterprise. Given the demands, the delays, the administrative, institutional and cultural resistance—in short, all the inertias, rational or otherwise, that have thus far locked in a manifestly vulnerable computerized vote counting process—the whole quest for reliable audits is inevitably going to be seen (especially by those upon whom the demands are being made) as a bridge too far. It is imperative not to make it an inch longer than it absolutely has to be.

Probably the best way to show the Hybrid Audit at work is through two sets of basic examples.

Our first set will audit a run-of-the-mill noncompetitive election. The vast majority of binary (two-candidate or Yes/No proposition) races are not close. While reversing the outcome of such elections would stretch the smell test, it is not beyond the pale from a technological standpoint. All elections deserve quantitative protection, but if the huge swath of noncompetitive ones can be handled simply and quickly, the audit process as a whole will be seen to be far more practical.

For our noncompetitive example, let's posit a votecount of 70 percent for "A" and 30 percent for "B," a VMOV of 40. We assume that the "one-half VMOV"

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<sup>10</sup> See note 4.

standard (VMOV/2) has been written into the audit legislation; in this case VMOV/2 = 20. Let's now look at a few possible audit outcomes:

- 1) If the audit result is 66%A - 34%B, the AMOV = 32;  $32 > 20$ , so do nothing further; the election PASSES.
- 2) If the audit result is 95%A - 5%B, the AMOV = 90;  $90 > 20$ , so do nothing further; the election PASSES. Note that in this example, the audit is "way off," but not in the direction that would suggest any possibility of an outcome reversal; as a general rule, whenever AMOV > VMOV, the election passes.
- 3) If the audit result is 58%A-42%B, the AMOV = 16;  $16 < 20$ ; the election FAILS, so *ESCALATE*; this would be a red flag if, as we began by assuming, the legislation sets the "one-half VMOV" standard. Note that most contests will be the 70%-30% species (i.e., noncompetitive) and in these contests the Hybrid Audit will virtually *never* have to escalate unless either something has gone seriously blooey or some election rigger has gone seriously crazy.

It gets more interesting in the relatively rare instances when contests are close. For our second set, let us take a *competitive* election in which the votecount is 52 percent for "A" and 48 percent for "B," a VMOV of 4. We again assume that the "one-half VMOV" standard has been written into the legislation; in this case, VMOV/2 = 2. Again, let's look at a few possible audit outcomes:

- 1) If the audit result is 55%A - 45%B, the AMOV = 10;  $10 > 2$ , so do nothing further, the election PASSES (remember, *whatever* the VMOV is, if AMOV > VMOV, the election passes).
- 2) If the audit result is 49%A - 51%B, the AMOV = -2 (negative because it is now A's margin of *loss*);  $-2 < 2$ ; the election FAILS, so *ESCALATE*; it can be seen that the impact of our simple formula for escalation is that *whenever* the audit produces a different victor from the votecount, AMOV will perforce be less than VMOV/2, and it will be a red flag triggering escalation by provision of the legislation.
- 3) If the audit result is 51.2%A - 48.8%B, the AMOV = 2.4;  $2.4 > 2$ , so do nothing further; the election PASSES.
- 4) If the audit result is 50.8%A - 49.2%B, the AMOV = 1.6;  $1.6 < 2$ ; the election FAILS, so *ESCALATE*.

I hope those examples make clear how this audit and pre-set standard would work in practice. It is based on a simple "flat" sampling of a fixed and pre-

determined percentage of the cast votes for a given race. This means that, unlike with the RLA protocol, ballots don't have to be re-sampled at different rates for each race to be audited. *A single sampling of the ballots will enable auditing of all races subject to audit.*

Note also that the escalation decision was in all cases *independent* of the statistical margin of error (MOE) of the audit. The MOE is a gauge of the likely accuracy of a sampling, with smaller MOEs indicating a more “powerful” sample. Logically the MOE decreases with increasing sample size—but, perhaps counterintuitively, it is virtually independent of the size of the pot being sampled, once that pot reaches about 20,000 in number, as is the case with virtually every election bearing national significance. For illustrative purposes, a random sampling of 1500 ballots from such a large pot will yield a result within 3 percent of the full vote count 95 percent of the time; a 3000-ballot random sample will come out within 2 percent; and a 10,000-ballot random sample within 1 percent.

In our Hybrid Audit, however, assuming the sample of ballots is of a reasonable size—which would be provided in nearly all cases by a 1 percent level of sampling—the MOE can effectively be (purists, cover your eyes) *disregarded*. This is because the MOE doesn't really come into play in *noncompetitive* elections—the audit results can be well outside the MOE without triggering the “one-half VMOV” standard, and will work just fine. And in very *close* elections, we will want to escalate if the one-half VMOV standard is triggered, *even if the results are within the audit's statistical MOE*.

Note that, for the purposes of illustration, we assumed a one-half VMOV (VMOV/2) standard for escalation. That standard could be legislatively established to be higher or lower: for example, a “one-quarter VMOV” standard, which would make escalation less likely and “weaken” the audit; or a “three-quarters VMOV” standard, which would make escalation more likely and “strengthen” the audit. I propose the one-half VMOV standard as being just about right in balancing selectivity and sensitivity.

And, of course, a more *complex* standard could be concocted, incorporating the MOE as a second trigger and essentially hybridizing the standard. But I don't see much value in that. That hands it all back over to the computers and the experts without an appreciable gain in auditing power, selectivity, or sensitivity. The closer to KISS this can be, without sacrificing detective or deterrent power, the better.

### **Sheep may safely graze**

It may be of value, for anyone yet unclear about how the Hybrid Audit is designed, to consider a pictorial/schematic representation of the audit at work. Picture a meadow with sheep grazing that ends in a cliff. There are sheep all over the meadow, some closer to the cliff's edge, some farther away. Each represents a computerized vote-count of one of the contests on a ballot. Then the sheep begin to move. Some move closer to the cliff, some move further away. Their new positions represent the results for each contest given by the Hybrid Audit. The cliff, of course, is the 50-50 line, or the place at which there would be a different winner.

We don't have to worry about any sheep that move further away from the cliff (statistically, that will be half the audit results); they're safe. And we don't have to worry about any sheep that move towards the cliff but don't get halfway there (while you don't get a statistical guarantee, the likelihood that the audit is signaling a miscount severe enough to fall off the cliff and change the winner is very low).

But any sheep that moves *more* than halfway to the cliff is in danger of falling off—a red flag, so you escalate to a full manual count (or an expanded count). There will be, unless fraud is rampant and bold, very few if any of those. Very close races will, of course, be more likely to escalate—which is how it should be, and just what is provided for in the RLA approach.

The Hybrid is basically measuring via audit how close either riggers or errors have come to the cliff's edge of altering the winner. And it does that with a minimum of sampling/counting sweat, complexity, and opportunity for confusion and error—and no nontransparent calculations whatsoever.

### **Conclusion**

The Hybrid Flat-RLA audit combines the best features of each species. The “flat” (pre-determined sampling percentage) aspect allows for simplicity of execution, a single sampling for multiple contests, and the development of a routine that is replicable from one venue and one election to the next. The RLA aspect bestows greater efficiency and calls for more labor *only where such labor is truly needed to verify winners and losers of elections*.

The Hybrid Audit is appropriately sensitive to potentially outcome-changing fraud or error, while sufficiently selective to make quick work of elections that are not in such jeopardy. It provides powerful anti-fraud deterrence while keeping Election Night complexity, confusion, conflict, and exhaustion to acceptable minimums. It should thus commend itself to election administrators

concerned that the implementation of a serious audit protocol (particularly one of the RLA type) will trigger such issues in their real world—“in the wild,” as it were. It also should gain the approval of election integrity advocates seeking an executable audit with built-in escalation provisions—in short, an audit with sharp teeth and very little fat.

Although the political and administrative inertias, even in "good" places, remain formidable, one can sense, in these politically-fraught and security-challenged times, a certain reweighting of concerns and desiderata—and, with that, the growing prospect of rescuing our elections from cyberspace and the black box in which they have become imprisoned.

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*These are the days of miracle and wonder and don't cry, baby,  
don't cry, don't cry, don't cry.*

-- Paul Simon, "The Boy in The Bubble"

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MA Occupy Hand-Counted Paper Ballots  
Occupy Rigged Elections  
PDA Clean Fair Transparent Elections Team  
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## ABOUT THE AUTHOR

Jonathan Simon is Executive Director of Election Defense Alliance, a nonprofit organization founded in 2006 to restore observable vote counting and electoral integrity as the basis of American democracy.

As a result of his prior experience as a political survey research analyst in Washington, Dr. Simon became an early advocate for an exit poll-based electoral "burglar alarm" system, independent of media and corporate control, to detect computerized vote shifting in Election 2004.

In the absence of such a system, he was nevertheless able to capture and analyze official exit poll data briefly posted on the web prior to its Election-Night disappearance, realizing as the following day dawned that he was in fact the only person in the world in possession of this critical data, which went on to serve as the initial basis for questioning the validity of the 2004 presidential election.

Dr. Simon has gone on to author, both individually and in collaboration, numerous papers and articles related to various aspects of election integrity. He has worked in cooperation with many Election Integrity organizations; appeared in several election integrity-related films, including *Stealing America: Vote by Vote* and *Uncounted: The New Math of American Elections*, and as an interviewee on dozens of live broadcasts. He tweets @JonathanSimon14 and invites all interested in corresponding to connect with him through LinkedIn, the *CODE RED* website [www.CODERED2014.com](http://www.CODERED2014.com), or by email at [jscodered2014@gmail.com](mailto:jscodered2014@gmail.com).

Dr. Simon is a graduate of Harvard College and New York University School of Law. He is admitted to the Bar of Massachusetts.