

GEORGIA VERIFIABLE VOTING LEGISLATIVE AND LEGAL CHRONOLOGY

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In the November 2000 Georgia election, approximately 82% of Georgians cast ballots on **verifiable** optical scan or punch card systems while roughly 17% cast their ballots on **unverifiable** lever machines. In January of 2001, after intense media hype over the 2000 Florida presidential election recount, former Secretary of State, Cathy Cox, produced a report entitled *“The 2000 Election: A Wake Up Call for Change and Reform”*.

In February 2001, Sen. Jack Hill introduced [SB213](#), in pertinent part “...to authorize the Secretary of State to conduct a pilot project to test electronic recording voting systems during the 2001 municipal elections...” and “...to create the Twenty-first Century Voting Commission...”. In March, 2001 Senate State and Local Government Operations Committee (SLOGO), State Senate, House Governmental Affairs Committee, State House passed substitute or amended versions. On or about March 1, 2001 the Senate State and Local Government Operations Committee (SLOGO) passed SB213. On March 13, 2001 the House Government Affairs Committee passed the bill. On March 21, 2001, the General Assembly passed the bill that was amended by the House. The bill was signed by the governor as **Act166** of the Georgia Legislature on April 18, 2001 and it included the provision that: **“Such voting systems shall be required to have an independent audit trail for each vote cast.”**

In June 2001, the **Twenty-first Century Voting Commission** authorized seven DRE vendors to participate in the pilot and the Office of Secretary of State entered into contracts with the six certified vendors to provide equipment and support for the pilots. The vendors were Diversified Dynamics, Election Systems & Software, Global Election Systems (GES), Hart InterCivic, Shoup Voting Solutions, and Unilect. GES was purchased by Diebold in 2002.

(**Note:** In 2006 after receiving intense nationwide negative publicity, Diebold renamed the division to Premier Election Solutions and in 2009 sold its equipment, support and servicing rights to Elections System Software (ES&S). **GES was owned by Bob Urosevich while ES&S was owned by his brother, Todd. These two companies were formed from Data Mark, the original company that the Urosevich brothers owned** and renamed to American Information

Systems before the split. Today ES&S machines are used to record almost **70% of the votes cast in America**, a sizeable portion of which are cast on unverifiable electronic voting equipment.)

In December 2001, the 21st Century Voting Commission issued a [report](#) that documented pilot project experiences and made recommendations for the future. **One recommendation was that such machines "have an independent paper ballot audit trail for each vote cast".** Two vendors, Avante and TruVote, offered technology that would likely meet the recommendation of the commission and the legal requirement of Georgia Act 166 but neither were seriously evaluated. In January 2002, the Georgia Technology Authority issued a [Request for Proposal](#) (RFP) that was drafted by the office of Secretary of State. **Secretary Cox's Request for Proposal did not contain the 21st Century Voting Commission recommendation or the legal requirement for an independent audit trail of each vote cast.**

In February of 2002, Sen. Jack Hill introduced [SB414](#) in pertinent part "...to provide that the state shall provide a uniform system of direct recording electronic voting equipment for use by counties in the state by 2004..." On February 7, 2002, the Senate Rules Committee referred SB414 to the Senate Ethics Committee where SB414 bill sponsor, Jack Hill, was Vice Chairman. Between February 7, 2002 and April 12 2002, the Ethics Committee, State Senate, House Governmental Affairs Committee and State House passed substitute or amended versions of the bill. The Ethics Committee passed SB414 on March 7, 2002 and the House Governmental Affairs Committee passed the bill on April 1, 2002. The General Assembly passed the bill that was amended by the House on April 12, 2002 and it awaited a signature by the governor before becoming law. For SB414, **Sen. Hill had removed the original SB213 requirement for an independent audit trail of each vote cast.**

On May 3, 2002, former Secretary of State, Cathy Cox and former Georgia Technology Authority Director, Larry Singer, entered into a [\\$54 million contract](#) with Diebold to purchase **electronic voting equipment that did not meet the provision of Act 166** stating: "Such voting systems shall be required to have an independent audit trail for each vote cast." Diebold was represented by lobbyist Lewis Massey who later joined with Bruce Bowers to form a lobbying

partnership entitled Massey Bowers LLC. Massey was the former Secretary of State and Cathy Cox served as his assistant during that time.

On May 9, 2002 the Governor signed the SB414 bill into law as Act 789 of the Georgia Legislature. Another \$4 million was also appropriated for electronic voter education and distributed to civic groups such as League of Women Voters and Common Cause of Georgia. The entirely new technology was implemented in less than six months. In November 2002, **Georgia became the only state in the U.S. to conduct statewide elections on electronic voting machines.** (Note: Today South Carolina and Maryland also conduct elections on statewide unverifiable voting equipment)

On March 4, 2004, vendors, Avante and TruVote, demonstrated their **voter verified** paper ballot audit trail (**VVPAT**) equipment to the Senate SLOGO Committee at the request of election integrity activists. On March 11, 2004 Senate SLOGO Committee passed [SB500](#) in pertinent part “...to provide all electronic recording voting systems to produce a permanent paper record of the votes recorded on such systems for each voter; to provide that voters have an opportunity to verify such record after voting; to provide that such paper records be retained for use in recounts and election challenge proceedings...”. The legislature took no further action on the bill but election integrity activists continued to pursue a legislative solution to restore verifiable voting.

In January of 2006, Rep. Harry Geisinger introduced [HB790](#), which still may be one of the most comprehensive verifiable voting bills ever introduced in a state legislature. The bill proposed to:

- Provide a voter verifiable permanent paper record as the official ballot of votes recorded for each voter;
- Specify that the verified paper records are the official ballots to be used for auditing, precinct hand counts, recounts and election challenge proceedings;
- Offer each voter the opportunity to verify and affirm that the official ballot has accurately recorded his or her intent before casting the ballot for counting;
- Restore public ballot counting procedures at all Georgia precincts on election night for a public, randomly selected race;

- Protect against any type of election fraud by allowing manual results to be compared against electronic results at the precinct on election night
- Stipulate that discrepancies in precinct vote count comparisons are publicly posted and reported to the county and state tabulation centers;
- Ensure that all tabulation center operations are conducted publicly and that precinct results are made public immediately;

The bill received a hearing in the House Government Affairs Committee from Chairman Austin Scott but the committee voted against it after Elections Director, Kathy Rogers, adamantly opposed it.

On February 1, 2006 Sen. Bill Stephens introduced [another SB500 bill](#), LC 28 2814, that did not have the original SB500 requirement to produce a permanent paper record of the votes cast. It stated in pertinent part “...so as to require all electronic recording voting systems to produce a permanent paper record of the votes recorded on such systems for each voter; to provide that voters have an opportunity to verify such record after voting; to provide for certain storage devices for such systems; to provide that such paper records be retained for use in recounts and election challenge proceedings; to provide for procedures for voting on electronic recording voting systems; to provide for a pilot program during the 2006 November general election and any runoff therefrom in certain counties...” On February 9, 2006 the Senate SLOGO Committee adopted an emended version, LC 28 2884S. On February 22, 2006, the Senate Rules Committee withdrew a version of the bill from the calendar and recommitted it to the SLOGO Committee. On or about February 28, 2006, the version that was presented to the committee had been modified to be self repealing and read in pertinent part: “...so as to provide for a pilot program during the 2006 November general election and any runoff therefrom in certain counties; to require that all electronic recording voting systems used in such pilot project produce a permanent paper record of the votes recorded on such systems for each voter; to provide that such voters have an opportunity to verify such record after voting; to provide for certain storage devices for such systems; to provide that such paper records be retained for use in recounts and election challenge proceedings...;”. The SLOGO committee adopted an amended version, LC 28 2953S.

On March 21, 2006 the House Governmental Affairs Committee voted to pass a committee substitute bill, LC 28 3088S, providing in pertinent part for a randomly selected, **public precinct audit of one race**. On 3/24/06, the Drenner amendment, AM 28 0708, that sought to restore SB500 provisions in pertinent part “...**to require all electronic recording voting systems to produce a permanent paper record of the votes recorded on such systems for each voter;...**”.was defeated on the House floor by a vote of 91-63. On March 27, 2006 the Senate disagreed with the House amended version of SB500 and a conference committee was established. On March 29, 2006, **the Conference Committee voted to drop the precinct hand count language from the SB500 bill at the request of the author, Senator Stephens**. On March 31, 2005 the General Assembly passed SB500 by a vote of 49-1 in the Senate and 151-0 in the House. The Governor signed the self repealing bill into law as Act 646 on April 28, 2006.

During the conference committee, the legislators who were members received warnings from public citizens that the Diebold machines planned for the pilot would jeopardize the ballot secrecy requirement of the Georgia Constitution. The machines sequentially rolled cast ballots in the exact order of the voters who used the machine. The members were also warned that it would be impractical to insure the accuracy of each vote cast at the time of use on Election Day because the ballots could not easily be counted from a roll. To solve these problems, members received recommendations to use any other technology that produces separately cut paper ballots that drop randomly into a ballot box and would allow a precinct to manually audit a race in about 30 minutes. However, committee members concurred with **Elections Director, Kathy Rogers who insisted on using Diebold technology and later left her position to join Diebold**.

Also In March of 2006, the State Election Board voted to acquire Diebold electronic poll books at a cost of approximately \$17 million, roughly the same amount of money that Secretary Cox estimated would be needed to outfit existing voting machines with VVPAT printers if Diebold would support such an addition. **The vote was over the objections of unanimous comments from all public citizens who requested that the money be used for VVPAT printers.** (Note: Diebold later refused subsequent attempts to upgrade the existing equipment with VVPAT printers.) After exhausting legislative options election integrity activists sought legislative help to restore verifiable voting in Georgia.

In July of 2006, a group of Plaintiffs brought a [Complaint](#) alleging five counts of legal, constitutional or other voting rights violations against the current method of voting. They included two additional counts against the 2006 pilot. After the 2006 elections, the Plaintiffs sought to amend the suit by adding candidates to help ensure that the Plaintiffs had appropriate standing. During discovery, the Plaintiffs determined that the violations they alleged were likely a result of the machines being acquired illegally. They also uncovered evidence that voting machines were improperly certified for a variety of reasons including the lack of certification reports. The Plaintiffs then amended the suit a second time to add counts that challenge the legality of the acquisition and certification. While preparing the first Motion for Summary Judgment, the attorneys for the Plaintiffs identified potential federal violations of due process and equal protection. The Plaintiffs then amended their suit a third time to add those counts in conjunction with the motion.

The final lawsuit contained **13 separate counts**, each challenging the legality or constitutionality of the electronic voting equipment installed in Georgia during 2002. **If any one of the 11 counts against the currently implemented voting technology was upheld the voting equipment would have to be replaced.** Black Box Voting author, Bev Harris, who founded the Black Box Voting web site and starred in HBO's Hacking Democracy, stressed that: "This is one of the two most important law suits in America. The Plaintiffs must have their day in court", but the Plaintiffs were never allowed to try their evidence in court.

In November of 2006, Karen Handel was elected Secretary of State. While running for the office, Mrs. Handel produced a [white paper entitled "Basics"](#). It corroborated several of the claims in the Plaintiffs' complaint. The white paper stated that:

- "The electronic voting machines currently used in Georgia's elections are already obsolete..."
- "Voters should have the ability to review their ballot both electronically and manually on paper"
- "Procedures must be established for audits of elections to verify that the electronic vote totals are accurate."

- “The paper audit trail should be the determining factor in discrepancies in the vote and should be the ballot of record.”

In January of 2007, Karen Handel took office. In July of 2007, her office produced an [Audit Trail Report](#) that further corroborated two additional claims by the Plaintiffs. The report was based on findings made public at audit trail pilot hearings conducted in 2006 by the State Election Board at the request of board member, Randy Evans. The two relevant conclusions were:

- The sequential printing of the VVPAT paper ballots does not guarantee voter anonymity as required by Georgia law.
- The manual audits, while successful in verifying the accuracy of the electronic vote count, proved very costly, time-consuming, and prone to human error.

The audit trail pilot and technology was eventually dropped but Secretary Handel took no action in support of the conclusions about Georgia voting machines she made in her *Basics* report before being elected. Plaintiffs later found out from public Ethics Commission records that during that time she was accumulating about \$25,000 in [campaign contributions](#) from employees and family members connected with the voting machine vendor lobbyist, Massey & Bowers.

On or about March 20, 2008 the Plaintiffs filed a [summary judgment motion](#) seeking to ban the voting equipment currently used in Georgia. The main thrust of the motion centered on a lack of equal protection and due process that the plaintiffs contend Election Day voters have when compared to absentee voters who use optically scanned paper ballots. The motion contended that retention of tangible paper ballots is required for voters to verify their actual ballot choices, for election officials to provide true recounts as needed, to investigate voting discrepancies, to prevent fraud and to produce evidence for contested elections.

In addition, the motion sought to ban database servers used to tabulate electronic and optical scan votes at county and state levels because of admissions from officials **that the equipment does not detect fraudulent manipulation of votes.**

The motion further sought to ban the sequential roll technology used in three precincts for the 2006 audit trail pilot on the grounds that it jeopardizes secrecy of the ballot. The motion also cited **evidence of improper certification** and requested that a Special Master be established to ensure that all voting equipment is properly certified.

Also on the same day the Defendants filed their own [summary judgment motion](#) seeking to dismiss all of the counts of the lawsuit. Ironically, **the Plaintiffs determined during discovery that they would have not filed a suit if the law had been followed in 2001 when the machines were procured and certified.** That law required an independent audit trail of each vote cast.

On September 8, 2008, Fulton Superior Court Judge Michael Johnson held a hearing on the summary judgment motions and dismissed the Plaintiffs' case even though **facts of the case were in dispute and thus should have mandated a trial.** Judge Johnson promised a written ruling within five days but that ruling was not produced for months and only then after a state legislator called his office to request it. **Once the Plaintiffs reviewed [Judge Johnson's ruling](#) they found what they believed to be 17 conclusions that had no basis in the facts or evidence of the case.**

On or about March 30, 2009, the Plaintiffs filed a notice of **appeal directly to the Georgia Supreme Court.** The grounds for the appeal were that:

- The court misapplied key case law that establishes voting as a fundamental right protected by both U.S. and Georgia Constitutions.
- The court denied the Plaintiffs' right to a trial by making numerous conclusions that conflicted with the evidence in the case.

On June 2, 2009, the Plaintiffs, now considered to be appellants, filed their [brief in the Georgia Supreme Court](#). The brief contained a subset of the arguments in the previous Fulton Superior Court case mostly focusing on the unconstitutional nature of the voting process due to evidence that:

- Georgia Constitution requires “Elections by Ballot” and there is no ballot
- Georgia Code that attempts to exempt electronic voting machines from Georgia’s ballot requirement is unconstitutional
- Georgia code at time of purchase required an independent audit trail of each vote cast and Director of the Center for Election Systems at Kennesaw State University admitted in deposition that they do not have one
- Georgia code requires the machines to record every vote accurately and the office of the Secretary of State has no proof that the machines recorded results accurately
- The Georgia and U.S. Constitutions require equal protection and Election Day voting machines do not provide vote count protection equal to absentee ballots

On June 29 2009, the Defendants, now considered to be appellees, filed their [brief](#) to the Georgia Supreme Court to dismiss all counts of the case. On Monday July 13th, the Georgia Supreme Court heard oral arguments for the motions. In October of 2009, they released a [decision](#) to **deny the Plaintiffs’ right to a trial even though the Plaintiffs’ had disputed 41 assertions made by the Attorney General’s office**. Legally speaking the court refused to apply strict scrutiny to our fundamental voting rights. It instead applied a minimal standard of scrutiny and ruled that the former Secretary had a rational basis for implementing the machines even though she was warned in advance they did not have an independent audit trail of each vote cast as required by law. In regards to the equal protection arguments that Election Day voters are not afforded the same protection as absentee ballot voters the court ruled that: “voters must assume the risk of necessarily different procedures”. The Plaintiffs still contend that the procedures between Election Day voting and absentee voting are **unnecessarily** different and **if voters must assume the risk that would automatically be a violation of their equal protection rights**. In essence, the court ruling defied all U.S. Supreme Court case law for ballot counting.

Secretary Handel, who had by then completely reversed her position, praised the Georgia Supreme Court ruling and claimed that *“Georgia has the most secure elections in the nation...”* Plaintiffs later found out from public Ethics Commission records that **she had taken about \$25,000 in [campaign contributions](#) from employees and family members connected with the voting machine vendor lobbyist, Massey & Bowers.**

After Secretary Handel resigned later that year to run for Governor, former Senator Brian Kemp was appointed as Secretary of State. At the January 2010 Georgia Christian Alliance debates he told an audience of about 300 people that if the legislature introduced a bill to resolve the voting machine problem “he would lead the charge”. Three weeks later in February when Rep. Tim Bearden introduced HB1215, a nearly identical version of the 2006 HB790 bill, Sec. Kemp refused to support the bill.

After Sec. Kemp used cost as an excuse not to support the bill, citizens presented him with a [study commissioned by the Maryland legislature](#). That study found that if Maryland replaced their unverifiable voting equipment that is nearly identical to ours with verifiable optical scan equipment the return on investment would be only eight years and afterward the state would actually have a multi-million dollar annual savings.

Secretary Kemp also commissioned an Election Advisory Council which accepted public comments at meetings held around the state. Georgia citizens chose verifiable voting and equal ballot access for all candidates as the two most overwhelming issues to solve. The two issues received more public comments than all other election issues combined. Despite the public concern for vote counting security and the fact that our voting machines are being employed beyond their 10 year useful life, Secretary Kemp has taken no action to restore verifiable voting in Georgia.