

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,
Plaintiff

**DECLARATION OF
JONATHAN SIMON**

v

Case No. 06-CV-0263
(GLS)

NEW YORK STATE BOARD OF ELECTIONS;
PETER KOSINSKI and STANLEY L. ZALEN,
Co-Executive Directors of the New York State
Board of Elections, in their official capacities; and,
STATE OF NEW YORK,
Defendants

Pursuant to 28 U.S.C. sec 1746, **JONATHAN SIMON**, declares as follows:

1. I am the co-founder of the Election Defense Alliance, a national coordinating body for citizen electoral integrity groups and individuals, and have also worked cooperatively with other major election integrity organizations.
2. Election Defense Alliance was founded July 4, 2006 to foster a cohesive national strategy to regain public control of the voting process so that official election outcomes are worthy of the public trust. EDA works with election integrity groups throughout the country committed to defending our electoral systems against electronic fraud and replacing the existing corruptible infrastructure with a process that is transparent, secure, and subject to verification.

3. I am a graduate of Harvard College and New York University School of Law and a member of the Bar of Massachusetts. I was a former political survey research analyst for Peter D. Hart Research Associates in Washington.
4. In the 2004 election, I was able to capture and analyze critical official exit poll data briefly posted on the web prior to its election-night disappearance, data which served as the initial basis for assessing and challenging the validity of the vote count. As part of my work I have developed election forensics protocols appropriate to the new technology of computerized voting systems.
5. I have authored or coauthored numerous papers addressing statistical anomalies and other evidence of computerized election fraud, including most recently (with Bruce O'Dell) *Landslide Denied: Exit Polls vs. Vote Count 2006*, http://electiondefensealliance.org/landslide_denied_exit_polls_vs_vote_count_2006, presenting evidence and analysis of systemic tabulation fraud, and (with O'Dell, Dale Tavis, and Josh Mitteldorf) *Fingerprints of Election Theft: Were Competitive Contests Targeted?*, http://electiondefensealliance.org/fingerprints_election_theft, examining the pattern of manipulation.
6. I have also collaborated with O'Dell in the development of an effective handcount sampling protocol, Universal Ballot Sampling (UBS), to be deployed as a check mechanism where computerized vote tabulation is used, http://www.electiondefensealliance.org/files/New_UBS_811Update_061707.pdf.
7. There are many reasons to believe that elections in the United States are subject to electronic manipulation: the secrecy of the vote-recording and vote-counting process;

the demonstrated technical feasibility, indeed ease, of such manipulation; the stakes involved; the extraordinary difficulty of obtaining “proprietary” evidence such as machine code; the sworn testimony of whistle-blowers; and the lack or inefficacy of verification protocols. There is widespread agreement among computer experts that such vulnerability exists.

8. *Landslide Denied* and *Fingerprints of Election Theft* establish conclusively that outcome-determinative manipulation of vote counts is not merely a vulnerability, but has in fact been occurring.

9. In *Landslide Denied* we compared the total nationwide vote count for U.S. House of Representatives in the 2006 general election with the unadjusted results of the Exit Poll conducted by Edison Research/Mitofsky International for the major media network consortium known as the National Election Pool (NEP). Unadjusted results are the demographically weighted results before they are altered to conform to the vote counts themselves. The margin of error of the Exit Poll was +/- 1%.

10. There was a disparity, favoring the Republican candidates in the official vote counts, of 3.9% between the Exit Poll and vote counts. This equates to a 3 million vote disparity nationwide, or a net aggregate shift of 3 million votes to Republican candidates for the House. Given the poll’s sample size, methodology, and margin of error, there was less than a one in ten thousand likelihood that a disparity of such magnitude could occur by chance.

11. There is no indication whether these votes were deleted, added, shifted, or a combination of these. Mere “glitches,” however must be ruled out as a cause, since the

very large number of such glitches required to produce a shift of millions of votes would shift those votes in *both* directions, precluding a *unidirectional* net shift of any significant magnitude.

12. Media-run exit polls did in fact have an excellent track record prior to the advent and proliferation of computerized vote counting equipment. However, as stated in *Landslide Denied*, “our analysis [was] not based on a broad assumption of exit poll reliability.” The NEP Exit Poll contained questions—such as approval ratings, prior votes, party identification—that served as objective demographic yardsticks and left no doubt that political bias of the exit poll sample towards the Democrats (the only serious argument advanced by defenders of the vote count in both 2004 and 2006) *did not exist* and could not have been the cause of the gross disparity.

13. *Landslide Denied* further identified evidence of an extraordinary change in the political dynamic occurring during the month before the 2006 election, when the Democratic lead among most likely voters nationwide nearly tripled from 9% to 26% according to the Cook Political Survey. This sea-change—occurring as it did after the time period when the mechanisms of vote manipulation could be effectively deployed, redeployed or recalibrated—led to a Democratic victory (though one reduced in magnitude) that was widely misconstrued to indicate that no significant manipulation had taken place.

14. In *Fingerprints of Election Theft*, Election Defense Alliance commissioned the research firm Survey USA to run election night surveys in counties where we predicted there would be at least one competitive and one non-competitive race among the contests

for Governor, Senator, and U.S. House. In the absence of the selective targeting of competitive contests for manipulation we should have found no clear correlation between survey-vote count disparities and the competitiveness of the contests.

15. As reported in *Fingerprints of Election of Theft*, we instead found a very strong correlation (statistically significant at the $p = 0.007$ level for the paired t-test analysis and at the $p = 0.0005$ level for a linear regression analysis) between the competitiveness of a given contest and the survey-vote count disparity in favor of the Republican candidate. This pattern has virtually no chance of existing in the absence of deliberate, directional manipulation of vote counts, and is consistent with our findings of manipulation in *Landslide Denied*.

16. It is clear from our examinations that electoral manipulation of wholesale magnitude has been occurring. An aggregate footprint of 3 million votes, certainly when targeted as evidenced in *Fingerprints of Election Theft*, can easily impound enough federal contests, including presidential electoral votes, to determine control of the central government of the United States.

17. *Any* vote tabulating device that relies on electronic processing to record, store, or transmit votes is effectively “faith-based” and vulnerable to wholesale manipulation by methods difficult or impossible to detect. This includes both DRE (touchscreen) and Optical-Scan equipment. Further, open source code, even when meticulously evaluated, provides no assurance that malicious modifying code has not been injected during subsequent phases of storage, deployment, and servicing.

18. Verification protocols have been developed to evaluate the accuracy of vote count results generated by electronic means. We have shown so-called “spot audits” to be of limited and questionable efficacy in this regard,

<http://www.electiondefensealliance.org/hr550auditflaws> , and have developed an aggregate hand-sampling protocol known as UBS that is both feasible and effective,

http://www.electiondefensealliance.org/files/New_UBS_811Update_061707.pdf .

19. The implementation of the Universal Ballot Sampling (UBS) protocol, sponsored by Election Defense Alliance, is made very difficult in venues where DREs with printers are involved in the vote-counting process. UBS, which entails a hand count of a random 10% of ballots in the federal and statewide contests, was designed to verify any count performed by optical scanners, whether precinct or central, where voter-marked ballots remain available for such verification and can be neatly sampled and counted.

20. In the event the Court were to direct that New York become HAVA-compliant by hand counting the two Federal races for the 2008 election, Election Defense Alliance will use its resources and its network of citizen electoral integrity groups and individuals nation-wide to assist in sending volunteers to New York to train and assist in the hand-count.

I declare under penalty of perjury that the foregoing is true and correct.

/s/

Executed on December 10th, 2007

Jonathan D. Simon