

# Module 15



## Accountability Check-Up:

### Are Your Public Officials Following the Rules?

Who checks to see that public officials are following their own rules? What can you do if they ignore the rules? How can citizens go about changing the rules? Citizens are taking the initiative to make a case – with proof – by themselves, sometimes as lone individuals. These actions require patience, good research skills, and the ability to read and parse out written information.

This module was the most challenging one to write, not because it's difficult to tell you where to find laws and regulations, or how to find out whether the rules are being applied, but because we want you to know that your efforts truly do make a difference.

In this module, we will show you citizens who took extraordinary measures to follow the correct steps to hold public officials accountable. Sometimes it worked.

Too often, even though citizens did the leg work, learned the applicable laws, followed appropriate procedures, and supported their case with solid evidence, their officials were never held accountable for breaking the law. In the end, the system failed.

It is important for you to find out for yourself whether public officials *can* be held accountable in your jurisdiction. We encourage you to follow the steps in this module. In areas where the system works, these techniques will provide you with powerful leverage. Even more important, if your democratic process has become infected, the role you play in exposing the breakdown of the system might just prevent the death of our governmental system altogether.

## Guide to Holding Public Officials Accountable

### Goals:

Find the statutes and regulations that pertain to elections, public records, or other areas related to problems you are experiencing with governmental non-responsiveness. Locate examples of failure to follow the rules. Expose those failures to the public, to the media, and if necessary, in court.

### What to do:

Start by working together with officials -- election officials who understand the laws and their nuances, legislators who understand how to get laws passed learning what the laws are in order to identify holes that need to be plugged.

- 1) Learn where to find your state election laws
- 2) Identify the gaps
- 3) Track pending legislation
- 4) Work to pass legislation to close the gaps

### Where to find laws and legislation for your state:

On-line sources for legal information do come with a disclaimer warning people to verify that information is the most current version before relying on information posted on their web sites. With that disclaimer in mind, here are a few resources you can use to help locate legal information for your state.

- For Statutes concerning Elections:

The Legal Information Institute at Cornell (Scroll Down to Elections):

[http://www.law.cornell.edu/topics/state\\_statutes2.html](http://www.law.cornell.edu/topics/state_statutes2.html)

LawResearch.com: <http://www.lawresearch.com/v2/statute/statstate.htm#elections>

- For tracking the status of Election Reform Legislation try The National Conference of State Legislators (NCSL) search page.

<http://www.ncsl.org/programs/legman/elect/elections.cfm>

- Also try your local State Legislators web site. You can try a Google search for "[State Legislature](#)", "[web site](#)"

### Identify the gaps

- Read current statutes, regulations and policies
- Interpret and make a concise translation in view of the specific problems you are seeing
- Be careful how you use language
- Try to imagine how someone can get around the specific wording.

For example, the term "voter verifiable" sounded good to many at first, until companies like VoteHere proposed to use printers at the polling place, not for printing a ballot that you can look at and authorize, but to print a code number to take home and look up on the Internet to "verify" your vote.

Be very very careful of words. In the VoteHere example, above, it turned out that by "verify" your vote they meant "verify that your vote had been cast" (not verify that the vote recorded for you represented who you voted for).

### **Where to find pending legislation**

<http://www.ncsl.org/programs/legman/elect/elections.cfm>

and

<http://www.fairvote.org/action/>

### **Passing new legislation**

- Practice reading legislative law, which can be daunting to some.
- Develop the knack for figuring out other people's alliances and positions. Figure out which officials can be counted on (and how far), and which cannot.
- If you are new to this, try to find someone to work with who already knows the system.
- If you work with a citizen's group, when choosing its name make sure it encompasses a broad region, like a state. If you tie the name to a specific county, representatives from other areas might not listen because they assume your group would only represent a limited area.
- In addition to focusing on specific legislative language, work on influencing lawmakers' willingness to tackle the issue. Lawmakers can be influenced by stories you get in the media and by the perception that their voting base is watching what they do.

### **Assign your public officials to a category and take strategic action accordingly**

**Category 1:** Sympathetic to your position

**Category 2:** Would be sympathetic if they could (but are under too much pressure e.g. afraid of losing their jobs)

**Category 3:** Ringleaders for the opposition or those who enthusiastically break the law.

### **Strategies to hold officials accountable:**

- For the first group (Sympathetic to your position) focus on identifying gaps in current policies and procedures. Work with the official to update procedures and lobby for improved legislation.

- For the second group (would be sympathetic but under pressure not to be) focus on rearranging the order of incentives. If the official doesn't want to rock the boat, mobilizing the voters he depends on to keep him in office may help. "Pressure from constituents" can provide the cover needed to make a tough decision.
- If you have a ringleader for the opposition or a public official who willfully violates the law, tactics need to focus on evidence, public exposure, and invoking consequences.

### **How to invoke consequences for public officials who break the rules**

- When you see problem behavior by public officials, such as certifying obviously unsuitable voting systems or refusing to let you see public records, search for the laws and rules that pertain. The kind of evidence you need will be public records, video, audio recordings, or photographs that clearly show what you are trying to prove. Also come armed with copies of the law. This will give you leverage.
- If you find out the rules are being broken, take action to expose this and use the regulations to force a change in behavior. Here are some of your options:
  - Publish the evidence on Internet blogs
  - Send the evidence to the media
  - Become a plaintiff in a lawsuit to force government accountability
  - Call for the removal of the public officials responsible
- Politicians respond to public opinion and bad publicity as 2 and 3 on their priority list, generally with 1 being responding to those who support their campaigns.

They will respond to 2 and 3 when they are overwhelming enough. Remember the scenes in 'Frankenstein' when the villagers are chasing the monster with pitchforks and torches? You, the "villagers" are *crucial* to getting public opinion and bad publicity to the tipping point. Your vote is your pitchfork and the media is your torch.

### **Look at the following examples, all achieved by citizens acting independently:**

One day, a Washington public official named David Elliott took a phone call from a citizen about a requirement for prior certification. In Washington, voting systems could be accepted only if they had first been certified and used elsewhere. The caller, a citizen named Linda Franz, thought that requirement stifled state options for voting equipment. Elliot suggested she support pending legislation to delete those requirements.

Perhaps he didn't expect her to look up the legislation and read all of it, because after looking more closely, Franz found that the *only* positive aspect of the bill was dropping prior-use requirements. The rest of the bill eliminated the requirement for a separate ballot, enhanced the legality of the electronic vote record and *gave the secretary of state free rein to accept voting-system changes, certified or not*. Franz, along with other concerned citizens such as computer consultant Marian Beddill stopped the bill and its

various incarnations in its tracks. Never underestimate the power of one or two determined people.

Linda Franz is not a very public person. Why would a private individual such as Franz decide to take on voting legislation and the public officials who are promoting it?

“All I know is that I’m 50 years old, and I never expected to have to spend the second half of my life fighting for my son’s right to vote,” she says.

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Jim March is an entirely different kind of lobbyist. He decided in August 2003 to apply his bespectacled, 6-foot, 4-inch presence to voting issues. March has been known to pull out "rig-a-vote" CDs he created which contain a certified version of voting system software, with step-by-step instructions for how to manipulate elections. He brings this CD to reporters and public officials and demonstrates the software’s flaws to them.

March often focuses on influencing lawmakers’ willingness to tackle the issue. Public officials have come to know that Jim March will pop up like poison ivy when there are certification hearings, sometimes toting whistleblower witnesses and signed affidavits. His efforts helped make a Senate Elections Committee hearing on certification a reality. That hearing, held by Senate Elections Commission chairperson Debra Bowen, provided devastating evidence that testing labs were passing systems that violate federal standards. See this transcript: <http://blackboxvoting.org/itahearing.pdf>

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New Hampshire has had a long tradition of manual recounts. But citizens like Nancy Tobi, of Democracy for New Hampshire, wanted this to be codified into law so that the tradition wouldn't be lost for one reason or another. Tobi and others worked with election officials and state legislature to craft legislation that passed with enthusiastic bipartisan support. Now the law better reflects New Hampshire's tradition.

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When New Hampshire needed to re-approve an insecure and unacceptable voting system that had already been used in many cities and towns, Nancy Tobi and Democracy for New Hampshire notified the citizenry about the public hearing. About 75 people showed up to witness and testify against the re-approval. Following more than four hours of evidence and moving testimony, the Ballot Law Commission nonetheless approved the machines.

This was not a success story. But these New Hampshire citizens aren't done yet:

- They have the hearing on video. In fact, they have on video the Diebold representative testifying that Diebold admits the software is defective.
- As of this writing, New Hampshire citizens are asking for the transcript of the hearing under the right to know laws.

- One commissioner voted in a way that was responsive to the citizenry.
- These New Hampshire citizens are now urging other citizens:
  - We need to gather evidence (audiovisual and public records).
  - We need to know the laws.
  - We need to show up.
  - And we must not give up.

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Riverside citizen Douglas Dye provides this account of a Riverside citizen audit of the June 6, 2006 election with research showing that the elections division broke the law:

**"Riverside County is out of compliance with election code 15302."**

What follows is the history of the development of data to support the above assertion.

- On Jan 11 I attended a meeting with Barbara Dunmore (Registrar of Voters) and her staff. This meeting was called in response to a report I had sent to Dunmore asserting that the total votes in the Nov 2, 2004 Statement of Vote was not in agreement with total votes as calculated from voter registration method of vote data.
- We discussed the concept of reconciling total votes as shown on Statement of vote with total votes as derived by a query on the voter registration data base. It was agreed that it is possible to do this provided a copy of the registration data base was made on the day of certification. At the time they contested the accuracy of my assertion because I was not using voter registration data collected on the day of certification.
- We also requested a copy of the Canvas certification procedure used in Riverside County.
- I received a copy of a document called "California Canvas Process". I also received and reviewed a document called "Canvas Requirements". This document is available at <http://www.forefrontelections.com/Reference%20Library/Canvass%20Chapter%20FINAL.pdf>
- It is clear to me from a reading of these documents and California Election codes that this reconciliation **is not only possible it is in fact required by California Election Code.**
- On June 27 the staff of Riverside county registrar saved a copy of the registration data base for this purpose.
- The table below is data taken from the June 6 primary in Riverside County. June 27 is the day the statement of vote was certified in Riverside County. This table is a combination of data from that data base and the statement of vote. In this table the 'Vote Methods' column and 'vote Count' column are from a query on the voter registration data base. I put the result of this query into an Excel spread sheet and then manually added data from the Statement of vote on the Riverside County web site. In the "vote counted" Colum I indicate cases where a vote was counted as yes and cases where a vote was not counted as no.
- The total of all votes in cases where a vote was counted is 198907.
- The total of all votes taken from the Statement of Vote is 200333.
- **Thus I contend this is an error of 1426 votes.**
- **I contend that California election code 15302 requires that these numbers either be in exact agreement or any discrepancy be investigated and reported.**
- At the time of the Jan 11 meeting I was not familiar with EC 15302. I simply thought it was a good idea to reconcile that data.

- The typical Statement of Vote published in California does not inform the public of such things as absentee ballots rejected on challenge. It also does not inform the public of any other case where a vote submitted in good faith was later rejected by the vote tally process.
- In preparation for the June 6 primary I was a member of the EOP (election observer panel). While observing the counting of absentee ballots the EOP was given copies of Riverside County procedures for processing of absentee ballots.
- **It was clear that if these procedures are carried out as stated there should be zero disagreement between the two total vote numbers.**
- **It is clear that errors that should get investigated, resolved and reported to the public in fact do not.**
- The table below shows a total of 1426 more votes reported by the central tabulator than recorded in voter registration vote method field. This is evidence of violation of California Election Code 15302.

<b>Vote Methods</b>	<b>vote Count</b>	<b>Vote counted</b>
Absentee Ballot	96001	yes
Voted at Polling Place	94246	yes
Mail Ballot Issued but not Returned	17870	no
Voted by Mail Ballot	8481	yes
Challenged Voter	4689	no
Undeliverable Absentee Ballot	427	no
Inactive Voter At Polling Place	177	yes
Undeliverable Mailed Ballot	82	no
Absentee Voided after Issue	29	no
Voided Ballot	21	no
Voted Early	2	yes
Not Registered	2	
<b>Summary</b>		
total votes from voter registration	198907	
total reported from official		
Canvas Statement of Vote	200333	
<b>Difference not explained</b>	<b>1426</b>	

***Reconciliation is required by California law.***

Follow-up is pending on these findings as of the time of this writing.

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Susan Pynchon of Florida Fair Elections Coalition did a detailed analysis of the contract when her county was purchasing new voting machines. By carefully reading the law, she learned that many of Florida's standards for voting system certification are in violation of state law and are not compliant with the federal Help America Vote Act. Upon finding this, the Florida Fair Elections Coalition wrote a detailed report and published it on the Internet, where it was circulated nationwide by several election integrity groups: <http://www.bbvdocs.org/general/FFECreport.pdf>

The state of Florida has never addressed the issue, and the county proceeded to purchase the machines.

Pynchon and others subsequently discovered that an uncertified version of voting machines was delivered to various Florida counties, and that delivery of uncertified voting systems is a felony (for the vendor) in the state of Florida. Pynchon and other Florida citizens have filed a lawsuit in an attempt to force the state of Florida to comply with the law.

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California citizen Joseph Holder reports the following:

*The Secretary is required by the Election Code (19204 and 19207) to make specific "findings" ( a legal term with a very specific definition). In addition, in the "Procedures for Approving....." that is still being referenced in the Staff Reports, Sections 508, 509, and 602 also amplify on the requirements of the Election Code...In his final decision approving a voting system he is required to make it in writing, signed, and include a statement of reasons for his decision with "specific reference" to the above referenced criteria (findings). I made a specific request for any such documents, because each Certification of Approval does not state anywhere in it that any of the voting systems approved this year are safe to use, or conform to all applicable laws, procedures and regulations as is required, etc.. What the Secretary has responded is that the STAFF REPORTS substitute for the statutorily required written statement by the Secretary.*

- They do not fulfill the requirements of the law. The law requires the Secretary himself to make those written findings and incorporate them in the decision to approve a voting system, and then signed by him. This means that none of the voting systems approved this year were legally approved.

Joseph Holder has filed a lawsuit against the secretary of state of California, together with a citizen-driven group called Voter Action.

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The California document called "Procedures for Approving, Certifying, Reviewing, Modifying and Decertifying Voting Systems" has disappeared from the secretary of state's Web site -- and many citizens are looking for these regulations.

They want to know how it is that the Secretary of State can claim procedures were followed, given the sorry state of security and accuracy in many of the voting systems now being used in California. The answer is simple: The secretary of state decided to change the rules and regulations, apparently without public notice. He hasn't issued new ones.

This information was first circulated by e-mail, then published on the Internet, then circulated widely through listservs. Citizens are using this information to mobilize for an upcoming hearing.

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While it is discouraging that some public officials seem to feel no need to do anything about it when they are found to be in violation of the law, forcing citizens to undertake the cumbersome, time consuming and expensive route of litigation – and even if the lawsuits are dismissed, as they often are – it is important to continue to document violations of regulations and laws.

"We never really know when something has succeeded or failed, because the effects of our actions are often felt much later on - sometimes after we are not around to know about it," says Nancy Tobi. "We've had so many failures in our efforts here in New Hampshire, many more failures than successes, I would say.

"I have something I keep in my pocket at all times, through all the inevitable failures and setbacks. These are the words that came from one of my favorite people, much smarter than I, who, during a dark time, said to me (with a genuine laugh!), "this is the best thing that could happen to you, this is food for your soul."

Another citizen named Brant Lamb is less charitable:

"All of this scurrying around that these people do is like rats, the rats do it in the dark and the politicians do it secretively. *Publicize the hell out of any of these efforts*, if you can't get press coverage, pin it up in your local grocery store! Publish highlighted copies of the regulations infringed right next to the pictures/stories of who infringed it. Explain in clear detail what they did wrong. Things don't get changed in an informational vacuum. We subconsciously think everybody knows this stuff because we do. Rouse the 'villagers'!"

Even if you don't have a legal case you may well have a publicity case. There's nothing wrong with using aggressive tactics if you tell nothing but the truth.

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This isn't just an intellectual problem we are facing. It can become a crisis of the human spirit. Citizens who undertake to truly hold public officials accountable are kindred spirits with Martin Luther, Martin Luther King, Gandhi, Rosa Parks, and yes, the women suffragettes, who dared fight against what seemed impossible odds and won.

**Collaboration and appreciation:** Black Box Voting wishes to thank **Joseph Holder**, a citizen from California, **Susan Pynchon** of **Florida Fair Elections Coalition**, **Jim March**, **Jerry Berkman** and **Bruce Sims**, citizens of California, **Melissa Urda**, a citizen from Illinois, **Nancy Tobi** of **Democracy for New Hampshire**, **Douglas Dye**, a citizen of Riverside County, Calif.; **Brant Lamb**, a citizen of Michigan, **Catherine Ansbro**, a citizen of Ireland, **Linda Franz**, **Citizens for Voting Integrity – Washington**, and so many other citizens of perseverance and courage for demonstrating how to use laws and regulations to pressure local officials to change elections practices.

# Your Own Additions to the Accountability Check-up Module

You can share your ideas by sending to [crew@blackboxvoting.org](mailto:crew@blackboxvoting.org)



What worked well?

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What new ideas did you come up with?

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Was there anything that didn't work very well?

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