

Will voting this year become a trick or a treat?

I just can't wait for Halloween to get here, because I have found the scariest, most sinister costume I've ever worn. It will make grown men cry. I get creeped out just thinking about it.

I'm going to be an electronic voting machine. And I don't plan to leave a paper trail.

If you've read any of these actual headlines recently, you'll know the horrors I'm talking about: "Poll machine flaw



THERE OUGHT TO BE A LAW

Ron Gifford

hidden, state says." "Voting machines put U.S. democracy at risk." "Hotel minibar keys open Diebold voting machines."

Apparently, someone just couldn't leave well enough alone. The world was a brighter place when you could walk into one of those bulky old voting machines, pull the curtain behind you and lose yourself in that magical electoral land of levers, knobs and buttons that thunked and dinged and usually recorded most of your votes on 100-year-old rotary counters. Oh, sure, they broke down a lot, and weren't terribly accessible for the disabled, and could probably be compromised with a screwdriver, but that's not the point. They were solid, permanent and rugged, like the very

democracy our votes were protecting.

And now what? At least in my precinct, we have to sit at a table behind a flimsy cardboard divider and fill in little circles next to the candidates' names on a paper that goes into an optical scanner. No curtains, no levers, no dinging bells. They've turned my voting booth into the ISTEP. What if I mark outside the lines—will my vote still count? What happens if the guy next to me tries to copy off my ballot? If I don't feel well, can I lie down in the nurse's office until the election is over?

As usual, this is pretty much all Congress' fault.

After the 2000 Florida election debacle, where angry mobs apparently went

around the state hanging guys named Chad, Congress passed the Help America Vote Act, lovingly known as "HAVA"—as in, "HAVA lot of fun trying to figure out how to spend billions of dollars on voting machines that don't work and raise suspicions about stolen elections."

HAVA required states to get rid of punch cards and lever-style voting machines that could be manipulated by political hacks. That's good. So those devices have been replaced by electronic voting machines that can be manipulated by computer hackers. Um, not so good.

Studies conducted by the National Institute of Standards and Technology, the Lawrence Livermore National Laboratories and Princeton University are best summed up by this statement from a recent report: "All three of the nation's most commonly purchased electronic voting systems are vulnerable to software attacks that could threaten the integrity of a state or national election."

And we've got trouble—yes, trouble—right here in Circle City. Just last month, the Indiana Election Commission warned county election officials in 47 counties that the commission had discovered serious flaws in the software of the MicroVote Infinity 2005 electronic voting machine. Now can we stop right there: Is anyone else concerned that we're using voting machines that sound like a Buzz Lightyear action toy?

Earlier this year, the state settled a complaint against a different company—Election Systems & Software, which provides voting equipment to 27 Indiana counties—for allegedly violating state election law. Although the company denied liability, it agreed to pay a six-figure fine and provide election officials with some training videos and informational posters. Yes, the state settled for posters. Frankly, if those posters didn't include that one of Farrah Fawcett that hung in my dorm room in the 1970s, we didn't get a very good deal.

So what's going on here, folks? Did they turn the election over to the BMV and just not tell us? After all, we're talking about voting machines used in most of the state. And many of those machines don't generate a paper trail, so if the software is screwed up, there's really no way to prove whom you voted for—or if you voted at all. For the 32 percent of eligible voters who will actually turn out to vote in November—and I've heard there are at least a few close races—is it too much to ask for a little assurance that our votes will actually and accurately be counted?

As you might imagine, the conspiracy theorists are out in full force on how elections are being stolen by corrupt campaigns with corrupted software. But even if you discount the notion that an early Diebold voting machine was found on the grassy knoll in Dallas in 1963, you have to be concerned about the legitimate issues being raised about the machines used here and throughout the country. Let's hope our election officials are able to ensure a fair and transparent election in the next few weeks.

Because seriously, Election Day really shouldn't be scarier than Halloween. •

Gifford is a partner at the law firm of Baker & Daniels in Indianapolis. His column appears monthly. This article is provided for general information purposes only and should not be regarded as legal advice for any particular situation. Gifford can be reached at 237-1409 or at ron.gifford@bakercd.com.