Authentication and Legal Admissibility of 'Computer Evidence from Electronic Voting Machines' in Electoral Litigation: A Qualitative Legal Analysis of Judicial Opinions of Appellate Courts in the USA

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Abstract : Several studies have established that electronic voting machines are prone to multi-faceted challenges. One of which is their capacity to lose votes after the ballots might have been cast. Therefore, the international consensus appears to favour the use of electronic voting machines that are accompanied with verifiable audit paper audit trail (VVPAT). At present, there is no known study that has evaluated the impacts (or otherwise) of this verification and auditing on the authentication, admissibility and evidential weight of electronically-obtained electoral data. This legal inquiry is important as elections are sometimes won or lost in courts and on the basis of such data. This gap will be filled by the present research work. Using the United States of America as a case study, this paper employed a qualitative legal analysis of several of its appellate courts' judicial opinions. This analysis equally unearths the necessary statutory rules and regulations that are important to the research problem. The objective of the research is to highlight the roles played by VVPAT on electoral evidence- as seen from the eyes of the court. The preliminary outcome of this qualitative analysis shows that the admissibility and weight attached to 'Computer Evidence from e-voting machines (CEEM)' are often treated with general standards applied to other computer-stored evidence. These standards sometimes fail to embrace the peculiar challenges faced by CEEM, particularly with respect to their tabulation and transmission. This paper, therefore, argues that CEEM should be accorded unique consideration by courts. It proposes the development of a legal standard which recognises verification and auditing as 'weight enhancers' for electronically-obtained electoral data.

Keywords : admissibility of computer evidence, electronic voting, qualitative legal analysis, voting machines in the USA

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