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## Why We Need Disclosure of Owners

### **Elections In America – Assume Crooks Are In Control** <sup>1</sup>

By Lynn Landes

*“Only a few companies dominate the market for computer voting machines. Alarmingly, under U.S. federal law, no background checks are required on these companies or their employees. Felons and foreigners can, and do, own computer voting machine companies.*

*“Voting machine companies demand that clients sign ‘proprietary’ contracts to protect their trade secrets, which prohibits a thorough inspection of voting machines by outsiders.*

*“And, unbelievably, it appears that most election officials don’t require paper ballots to back up or audit electronic election results. So far, lawsuits to allow complete access to inspect voting machines, or to require paper ballots so that recounts are possible ... have failed.*

*“As far as we know, some guy from Russia could be controlling the outcome of computerized elections in the United States.”*

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This is the article that triggered my interest in voting machines. After all, how hard can it be to find out who owns these companies?

## Chuck Hagel Poster Boy for Conflict of Interest

He stunned them with his upsets. Nebraska Republican Chuck Hagel came from behind twice during his run for the U.S. Senate in 1996. Hagel, a clean-cut, crinkly-eyed, earnest-looking millionaire, had achieved an upset win in the primary against Republican Attorney General Don Stenberg, despite the fact that he was not well-known.

According to CNN's *All Politics*,<sup>2</sup> "Hagel hoped he could make lightning strike twice" — and he did: Hagel then defeated popular Democratic Gov. Ben Nelson, who had led in the polls since the opening gun.

The *Washington Post* called Hagel's 1996 win "the major Republican upset in the November election."<sup>3</sup> Hagel swept all three congressional districts, becoming the first Republican to win a U.S. Senate seat in Nebraska in 24 years. "He won counties up and down the politically diverse Platte River Valley and topped it off with victories in Omaha and Lincoln," reported the *Hastings Tribune*.<sup>4</sup>

What the media didn't report is that Hagel's job, until two weeks before he announced his run for the Senate, was running the voting machine company whose machines would count his votes. Chuck Hagel had been chairman of American Information Systems ("AIS," now called ES&S) since July 1992.<sup>5</sup> He also took on the position of CEO when co-founder Bob Urosevich left in November 1993.<sup>6</sup>

Hagel owned stock in AIS Investors Inc., a group of investors in the voting machine company. While Hagel was running AIS, the company was building and programming the machines that would later count his votes. In March 1995, Hagel stepped down as chairman of AIS; on March 31, he announced his bid for U.S. Senate.<sup>7</sup>

When Hagel won what *Business Week* described as a "landslide upset,"<sup>8</sup> reporters might have written about the strange business of an upstart senator who ran his own voting machine company. They didn't because they didn't know about it: On Hagel's required personal disclosure documents, he omitted AIS. When asked to describe every position he had held, paid or unpaid, he mentioned his work as a banker and even listed his volunteer positions with the Mid-America chapter of the American Red Cross. What he never disclosed was his salary from or stock holdings in the voting machine company

whose machines had counted his votes.<sup>9</sup>

Six years later, when asked about his ownership in ES&S by Lincoln's Channel 8 TV News, Hagel said he had sold that stock. If so, the stock he says he sold was never listed as one that he'd owned.

This is not a gray area. This is lying. Hagel's failure to disclose his financial relationship with the company was not brought to the attention of the public, and this was a material omission. Reporters surely would have inquired about it as they researched stories about his amazing upset victories.

It is therefore understandable that we didn't know about conflicts of interest and voting machine ownership back in 1996. Had we known, perhaps we never would have chosen to herd every precinct in America toward unauditably voting. Certainly, we would have queried ES&S about its ties to Hagel before allowing 56 percent of the U.S. to count votes on its machines. In October 2002, I discovered that he *still* had undisclosed ownership of ES&S through its parent company, the McCarthy Group.

The McCarthy Group is run by Hagel's campaign finance director, Michael R. McCarthy, who is also a director of ES&S. Hagel hid his ties to ES&S by calling his investment of up to \$5 million in the ES&S parent company an "excepted investment fund." This is important because senators are required to list the underlying assets for companies they invest in, unless the company is "excepted." To be "excepted," the McCarthy Group must be publicly traded (it is not) and very widely traded (it is not).

Charlie Matulka, Hagel's opponent in 2002 for the U.S. Senate seat, finally got fed up. He called a press conference in the rotunda of the Nebraska Capitol Building on October 23, 2002.

"Why would someone who owns a voting machine company want to run for office?" Matulka asked. "It's like the fox guarding the hen house."

Matulka wrote to Senate Ethics Committee director Victor Baird in October 2002 to request an investigation into Hagel's ownership in and nondisclosure of ES&S. Baird wrote back, in a letter dated November 18, 2002, "Your complaint lacks merit and no further action is appropriate with respect to the matter, which is hereby dismissed."

Neither Baird nor Hagel ever answered Matulka's questions, but

when Hagel won by a landslide, Matulka dug his heels in and asked for a recount. He figured he'd lost, but he asked how much he'd need to pay to audit the machine counts. It was the principle of the thing, he said. Matulka received a reply from the Nebraska Secretary of State telling him that Nebraska has no provision in the law allowing a losing candidate to verify vote tallies by counting the paper ballots.

In January 2003, Hagel's campaign finance director, Michael McCarthy, admitted that Hagel had ownership ties to ES&S. When the story was finally told, Hagel's staff tried to claim there was no conflict of interest.

"[Hagel's Chief of Staff Lou Ann] Linehan said there's nothing irregular about a person who used to run a voting-machine firm running for office," wrote Farhad Manjoo of *Salon.com*. "'Maybe if you're not from Nebraska and you're not familiar with the whole situation you would have questions,' she says. 'But does it look questionable if there's a senator who is a farmer and now he votes on ag issues? Everybody comes from somewhere.'"<sup>10</sup>

Two points, Ms. Linehan: A senator who is a farmer, if he follows the law, *discloses* that he is a farmer on his Federal Election Commission documents. Then, if he votes oddly on a farm bill, people scrutinize his relationship with farming. Second, the farmer's own cows aren't counting his votes. Anyone with an I.Q. bigger than a cornhusk knows the real reason Hagel hid his involvement with American Information Systems on his disclosure statements.

Hagel was reelected in November. An article in *The Hotline* quoted a prominent GOPer predicting that Hagel would run for president in 2008. The article then quotes Linehan: "It's abundantly clear that many people think that's a possibility for Senator Hagel."<sup>11</sup>

I called Victor Baird, counsel for the Senate Ethics Committee, beginning with a nonconfrontational question: "What is meant by 'widely traded' in the context of an 'excepted investment fund?'"

Baird said that the term refers to very diversified mutual funds. I asked why there were no records of Hagel's ties to the voting company in his disclosure documents. Was he aware of this? Had he requested clarification from Hagel? I knew I had struck a nerve. Baird was silent for a long time and then said quietly, "If you want to look into this, you'll need to come in and get hold of the documents."

Something in his tone of voice made me uncomfortable. I did not get the impression that Baird was defending Hagel. I rummaged through my media database and chose a respected Washington publication called *The Hill*, where I talked with reporter Alexander Bolton. He was intrigued, and over the next two weeks we spoke several times. I provided source material and he painstakingly investigated the story.

Unfortunately, when Bolton went to the Senate Public Documents Room to retrieve originals of Hagel's 1995 and 1996 documents, he was told they had been destroyed.

"They said anything over five years old is destroyed by law, and they pulled out the law," said Bolton.

But the records aren't quite gone. Hagel's staff told Bolton they had the documents. I located copies of the documents at OpenSecrets.org, a Web site that keeps a repository for FEC disclosures. In 1997, Baird had asked Hagel to clarify the nature of his investment in McCarthy Group. Hagel had written "none" next to "type of investment." In response to Baird's letter, Hagel filed an amendment characterizing the McCarthy Group as an "excepted investment fund," a designation for widely held, publicly available mutual funds.

According to Bolton, Baird said that the McCarthy Group did not appear to qualify as an "excepted investment fund."<sup>12</sup> Then Baird resigned.

When Baird met with Bolton, he told him that Hagel appeared to have mischaracterized his investment. Then Hagel's staff met with Baird. This took place on Friday, Jan. 25, 2003. Hagel's staff met with Baird again on Monday, Jan. 27. Bolton came in for one final interview Monday afternoon, just prior to submitting his story to *The Hill* for Tuesday's deadline.

Baird had just resigned, it was explained, and Baird's replacement, Robert Walker, met with Bolton instead, urging a new, looser interpretation of Hagel's disclosures — an interpretation that did not mesh with other expert opinions, nor even with our own common sense.

Where was Victor Baird? Could he be interviewed at home? Apparently not. Bolton was told that Baird still worked for the Senate Ethics Committee, just not in a position that could talk to the press.

Could there have been another reason for Baird's resignation?

Maybe. Baird had announced in December 2002 that he planned to resign at the end of February 2003. But he changed his mind and left the position he'd held for 16 years, a month early and in the middle of the day.

*In a nutshell:*

- Hagel omitted mentioning that he received a salary from American Information Systems in any disclosure document.
- He omitted mentioning that he held the position of chairman in his 1995 and 1996 documents, but says he included it in a temporary interim 1995 statement. The instructions say to go back two years. Hagel also held the CEO position in 1994, but omitted that on all forms.
- He omitted mentioning that he held stock in AIS Investors Inc. and also did not list any transfers or sale of this stock.
- He apparently transferred his investment into ES&S' parent company, the McCarthy Group, and he disclosed investments of up to \$5 million in that. He omitted the itemization of McCarthy Group's underlying assets. Under "type of investment," he originally wrote "none."
- When asked by Baird to clarify what the McCarthy Group was, he decided to call it an "excepted investment fund."
- Baird failed to go along with Hagel's odd description of the McCarthy Group as an "excepted" fund
- Baird was replaced by a new Ethics Committee director who did support Hagel's interpretations.
- After this chapter was posted on the Internet, Hagel's staff sent a bulletin to the press saying that he did disclose his position with AIS. Several reporters simply accepted this misstatement at face value. In fact, Hagel's staff is referring to a temporary *interim* statement covering five months in 1995, which still omitted his stock holdings and salary from AIS and the CEO position. Somehow even the temporary disclosure of his ties to AIS disappeared from his final 1995 disclosure form. All of Hagel's 1995 and 1996 disclosure documents, including the temporary interim statement, contain material omissions, and his final forms (the ones used by the press and the Senate Ethics Committee) omit *everything* about AIS.

Hagel has never been called upon to answer for these omissions.

Bolton told me that something had happened during his investigation of the Hagel story that had never occurred in all his time covering Washington politics: Someone had tried to muscle him out of running a story. Jan Baran, perhaps the most powerful Republican lawyer in Washington, and Hagel's Chief of Staff, Lou Ann Linehan walked into *The Hill* and tried to pressure Bolton into killing his story. He refused. "Then soften it," they insisted. He refused.

Bolton is an example of what is still healthy about the consolidated and often conflicted U.S. press. Lincoln's Channel 8 TV News is another example — it was the only news outlet that reported on Matulka's allegations that Hagel had undisclosed ties with the voting machine company scheduled to count their votes. The 3,000 editors who ignored faxed photocopies of Hagel's voting machine involvement, and especially the Nebraska press who had every reason to cover the story but chose not to inform anyone about the issue, are an example of what is wrong with the media nowadays.

Here's what Dick Cheney had to say when he learned that Hagel was also being considered for the vice presidential slot in 2000: "Senator Chuck Hagel represents the quality, character and experience that America is searching for in national leadership."

According to an AP wire report, Sen. Chuck Hagel thinks he's capable of being an effective president and says he isn't afraid of the scrutiny that comes with a White House bid.

"Do I want to be president?" Hagel commented, "That's a question that you have to spend some time with. ... I'm probably in a position as well as anybody — with my background, where I've been, things that I've gotten accomplished."<sup>13</sup>

Whether or not Hagel is in a position to run for president, the company he managed is certainly in a position to count most of the votes. According to the ES&S Web site, its machines count 56 percent of the votes in the U.S.

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This is not, ultimately, a story about one man named Hagel. It is a story about a rush to unauditible computerized voting using machines manufactured by people who sometimes have vested interests.