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MIKEL HAAS
TREASURER
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GAIL PELLERIN
SECRETARY
Santa Cruz County

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DOLORES PROVENCIO

Imperial County

ELMA ROSAS

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KAY VINSON*

City Clerk, Murrieta

* non-voting member

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Lassen County

BARBARA DUNMORE

Southern Area

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CANDY LOPEZ

Bay Area

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CLERK OF THE BOARD:

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Los Angeles County

COUNTY CLERK:

KATHIE MORAN

Colusa County

VICKI PETERSEN

Sonoma County

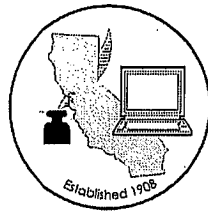
ELECTIONS:

JILL LAVINE

Sacramento County

DEBORAH SEILER

Solano County



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

Stephen L. Weir, President
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March 26, 2007

The Honorable Debra Bowen
California Secretary of State
1500 – 11th Street, Suite 600
Sacramento, CA 95814

Dear Secretary Bowen:

DRAFT CRITERIA FOR A TOP-TO-BOTTOM REVIEW OF ELECTRONIC VOTING SYSTEMS

On behalf of the California Association of Clerks and Election Officials (CACEO), I am transmitting the attached position paper in response to your request for public comment on the Draft Criteria for a Top-to-Bottom Review of Electronic Voting Systems released by your office on March 22, 2007.

The position paper affirms our members' commitment to the security, reliability, accessibility and integrity of voting systems used in California and expresses our concerns with regard to the scope and timing of the proposed review. Additionally, the position paper includes suggestions and comments on some of the specifics outlined in the draft criteria.

As an Association, we recognize the public is best served through a cooperative partnership between local election officials and the Secretary of State. Our membership welcomes the opportunity to have representation in any voting-systems review process and to make available our collective experience and background, as election professionals, to ensure the effectiveness of a project of this magnitude and significance.

We look forward to your response to the suggestions and concerns raised in our position paper. Individually and collectively we will continue to discuss and review the draft criteria and will submit additional comments to your office accordingly. If you would like to meet with our Executive Board to discuss any of the issues raised in our response, we would be happy to do that as well.

Sincerely,

Stephen L. Weir, CACEO President
Contra Costa County Clerk-Recorder

SLW:ceb

The Honorable Debra Bowen
February 16, 2007
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Attachment

OFFICERS 2006-2008

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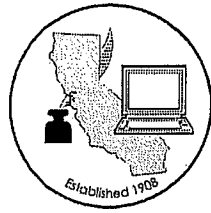
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March 26, 2007

CACEO POSITION PAPER ON THE SECRETARY OF STATE'S PROPOSED TOP-TO-BOTTOM REVIEW OF ELECTRONIC-VOTING SYSTEMS CERTIFIED FOR USE IN CALIFORNIA ELECTIONS

The California Association of Clerks and Election Officials (CACEO), takes this opportunity to comment on Secretary of State Debra Bowen's draft "top to bottom" review proposal, which was received on March 22nd.

As public officials, and as the election professionals charged with the responsibility of conducting fair, accurate, secure and accountable elections, members of the CACEO support rigorous testing and review of voting systems. Our members recognize the importance of ensuring the integrity of voting systems and providing access for all eligible citizens to participate in our country's fundamental democratic process.

Much has occurred in our state in the years and election cycles since the historically-close Presidential Election of 2000. In short order and despite regulatory disruption, California successfully implemented new voting systems by 2006 in all 58 counties that meet the sweeping changes and rigorous standards mandated by the Help America Vote Act (HAVA) passed by Congress in 2002. The voting systems in use in California today exceed national certification requirements and have been tested and certified under more rigid technical and security standards as adopted by the State of California.

These systems and the administrative structure behind them performed exceptionally well in the November 2006 Election when over 8 million voters statewide successfully cast ballots, which were counted accurately and securely.

All California voting systems already produce paper-based verifiable ballots for every vote cast. Additionally, a sample of these paper-based ballots is randomly selected for auditing against computer-generated vote totals prior to official certification of results. These are the key provisions included in federal legislative proposals currently pending before the U.S. Congress in preparation for the 2008 elections.

On the surface, the concept of a top-to-bottom review of all voting systems sounds reasonable. In fact, the CACEO offered Secretary Bowen assistance in developing criteria for this review that would be meaningful and effective. On

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February 5, 2007, the CACEO issued the following statement as part of "CACEO Position Paper on the Addition of a February Presidential Primary:"

Given Secretary of State Debra Bowen's announced plan to conduct a top to bottom review of voting systems, the state association of elections officials has asked that it be conducted in an orderly, fair, comprehensive and inclusive manner. Criteria for the review should mirror national standards and should be carefully crafted prior to commencement to ensure that the elections process is not disrupted or unintentionally put at risk due to compressed timeframes or untested procedures. A review of all systems should be undertaken to avoid singling out a specific company or type of technology.

In view of the fact that independent parallel monitoring of all electronic-voting systems used in the 2004 and 2006 elections documented 100% accuracy of results, counties urge state administrators to avoid any significant or systemic changes on the eve of the most complex and crowded election cycle in recent memory.

Against this backdrop, and in view of the draft standards we received, our comments address three levels. First, we believe that the suggested criteria are not comprehensive and merit extensive additional comment and refinement. Second, we believe that the time provided for comment is insufficient and the criteria sufficiently ambiguous that extending the abbreviated comment period is imperative. Third, we have specific questions and concerns about the review criteria as they exist in draft form.

Scope of Review

The draft standards are not sufficiently comprehensive and merit extensive additional comment and refinement.

There are several basic tenets of elections that are commonly accepted by election professionals:

- Accuracy
- Privacy
- Reliability
- Security
- Accessibility for Voters with Specific Needs
- Speed of Counting and Results Reporting

All voting systems must meet some threshold level of each of these tenets, though it is widely understood that some systems perform better in some of these categories than others. The U.S. Elections Assistance Commission (EAC) and its predecessor agencies have endeavored, through the ongoing development of voting-systems standards, to ensure that voting systems either meet all of these requirements or are used in combination with other voting devices to do so.

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The CACEO believes that any top-to-bottom review should take all these tenets into account. In addition, we believe the review should clearly list every voting system as well as every combination of systems currently in use and set forth the criteria for each of the basic tenets, i.e., accuracy, reliability, security, etc. A complete list of systems, combined with a full spectrum of measurement and a clearly delineated threshold for what is acceptable and what is not, is essential for a fair and orderly review.

In addition to the scope of the review, we have concerns about the identity and qualifications of those conducting it. We suggest Secretary Bowen should establish clear criteria for those selected to conduct the review and publish the selection criteria and the credentials of those selected prior to its commencement.

We also suggest including as reviewers Dave MacDonald of Alameda County and Ira Rosenthal of Solano County, who serve both as Chief Information Officer (CIO) and as Registrar of Voters (ROV) of their respective counties. Both possess exceptional credentials and first-hand elections experience. They have agreed to perform this service along with Los Angeles County's CIO, Jon Fullinwider, who is independent of the ROV and has oversight over all technology purchases and implementations in the largest elections jurisdiction in the country.

Timing

There are two timing issues that concern us.

Only Six Working Days to Comment

First, we are concerned that we have been given only six working days to comment on these criteria, which we understand the Secretary's staff has been working on for many weeks. As opposed to the standard 30-day public review and comment period typically associated with a public process of this magnitude, Secretary Bowen has offered this restrictive timeframe with no mention of a process by which initial public input will be assessed, disclosed or incorporated into the final review criteria.

We suggest a minimum 30-day public review period and request that an additional review and comment period be allotted for subsequent drafts that emerge following input.

Potential Conflict with 2008 Presidential Election Cycle

Second, we believe a meaningful top-to-bottom review needs to occur within a timeframe that does not disrupt the electoral process. This review process must be methodical and well-defined as well as recognize the practical realities of election administration in the real world. Our concern is that the timeline suggested in the draft review for decertifying current state- and federally-certified voting systems prior to the pending 2008 Presidential Election cycle would destabilize California elections.

We believe Secretary Bowen should be mindful that proposing this review while elections legislation, which could amend federal voting system standards, is pending in Congress could

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deplete resources, cause chaos for election administrators, and create an unsubstantiated sense of crisis among the electorate. Of far greater importance is the need for state and local elections officials to work cooperatively to ensure continued success and transparency of the elections process as we prepare for three major statewide elections in 2008, starting in ten months with California's first-ever February Presidential Primary Election.

Specific Draft Review Criteria Concerns

- Scope

The stated goal of the draft criteria is "to determine whether currently certified voting systems provide acceptable levels of security, accessibility, ballot secrecy, accuracy and usability," but they do not contain any criteria to measure accuracy or reliability. Clear, measurable standards are necessary to evaluate all the basic tenets of elections and a threshold for determining what constitutes an acceptable level must be agreed upon and promulgated prior to any testing.

- Accuracy

There are no standards for the assessment of accuracy in the draft criteria. It is the position of the CACEO that all systems, including all paper-based systems, should undergo some analysis of accuracy.

- Reliability

It is the position of the CACEO that all systems should undergo a volume test as a minimum requirement of any review to assess the basic reliability of all equipment and software currently in use. This test should include an analysis of the durability of equipment that must be transported to polling places.

- Security Testing

The draft standards contain no comparison between the relative security risks for paper-based optical scan and direct recording electronic (DRE) systems. The proposed criteria appear to focus exclusively on DRE's. For example, the reference to "untraceable vote tampering" refers to electronic recording of votes only. It does not mention or recognize the potential for "untraceable vote tampering" using paper ballots. The document should contemplate the comparative opportunities for a security breach between the two types of systems.

The security criteria refer to "vote tabulating devices," and we believe these should be enumerated specifically. Again, we believe a complete taxonomy of systems and blended systems should be prepared and clearly defined tests, with precise standards and stated outcomes, should be conducted.

The proposed "red team" concept disregards the real-world election environment and the security of currently certified systems that have performed accurately in recent past

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elections. In order for a "red team" exercise to be legitimate, a contrasting "blue team" is required to ensure relevance and comparison. The proposed review criteria do not contain this balance.

The proposed "red team" concept also contemplates giving attackers access to source code, which is unrealistic and dangerous if not strictly controlled by test protocols. It is the considered opinion of election officials and information technology professionals that ANY system can be attacked if source code is made available. We urge the Secretary of State not to engage in any practice that will jeopardize the integrity of our voting systems.

- Source Code Review

The source code review section is vague, seemingly arbitrary, and contains no clear and measurable requirements. Since source code is already reviewed by independent testing authorities under standards developed by the EAC, it is critical to outline how this proposed source code review will differ from the EAC-sponsored review already conducted.

- Disability Access Standards

The draft review standards focus exclusively on a single feature, an "accessible" voter-verified paper-audit trail (VVPAT). While federal and state standards exist for the VVPAT, currently there is no definition of or standards for an "accessible" VVPAT.

- Disability Access Testing

The proposed disability access testing standards impose criteria exclusive to one or two voting systems. For example, requiring a "sip and puff" device is overly prescriptive and does not contemplate alternate devices such as a head stick or mouth stick commonly available to quadriplegic voters.

There are no accessible voting devices that are 100% perfect for all types of disabilities. The narrow focus of the proposed criteria suggest a predetermined outcome that is inconsistent with an October, 2003 U.S. Department of Justice opinion stating that voting devices containing features to serve persons with disabilities are not required to be identical to all other voting devices. The opinion concluded that the VVPAT type device used in California did not contravene section 15481 (a)(3)(A) of the Help America Vote Act.

Finally, the review criteria make no mention of the reliability of accessible voting devices, which has varied widely among the systems currently in use.

- Impact to the Election Cycle

The Secretary's document solely focuses on the 2008 election cycle. It fails to consider scheduled elections involving millions of voters in November 2007. Preparing for elections is a year-round process in California.

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Conclusion

The CACEO is dedicated to serving the voters of this state and to ensuring that all voting systems, practices and procedures promote the goals of accuracy, privacy, reliability, security, accessibility for voters with specific needs and speed of counting and reporting results. Any top-to-bottom review should adequately assess all of these basic tenets in a manner that is clear and equitable and that defines measurable objectives.

The advantage of a comprehensive voting-system review is the affirmation that our voting systems in California meet the high standards deserving of the largest voting population in the United States. There is a huge downside for the voters of California if this process is mismanaged or is not carried out timely, thoroughly and equitably.

SLW:ceb