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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MARK BANFIELD  
419 N. Saddlebrook Circle  
Chester Springs, PA 19425,

SARAH BECK  
241 McIntosh Road,  
West Chester, PA 19382,

JOAN BERGQUIST  
217 Devon Boulevard  
Devon, PA 19333,

ALAN BRAU  
483 Sugar Maple Court  
Bethlehem, PA 18017,

LUCIA DAILEY  
132 Clark Street  
Clarks Green, PA 18411,

Docket No: \_\_\_\_\_

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PETER DEUTSCH  
153 Cherry Lane  
Aliquippa, PA 15001,

CONSTANCE FEWLASS  
2543 Brownsville Road  
Langhorne, PA 19053,

BARBARA GLASSMAN  
4907 Cabin Run Road  
Pipersville, PA 18947,

MARIJO HIGHLAND  
Center Square Towers Apts.  
555 Broad Street  
Doylestown, PA 18901,

JANIS HOBBS-PELLECHIO  
106 Beulah Road  
Doylestown, PA 18901,

DEBORAH JOHNSON  
10 Hayden Heights Road  
York, PA 17404,

ROBERT MAXWELL McCORD  
135 Fishers Road  
Bryn Mawr, PA,

ANDREW MCDOWELL  
1102 Winchester Trail  
Downingtown, PA 19335,

JAMES MICHAELS  
132 Clark Street  
Clarks Green, PA 18411,

J. WHYATT MONDESIRE  
213 E. Phil Ellena Street  
Philadelphia, PA 19119,

MARY MONTRESOR  
825 Conewago Creek Road  
Manchester, PA,

REV. JAMES MOORE  
904 East Gowen Avenue  
Philadelphia, PA 19150,

CATHY REED,  
619 Greenleaf Street  
Allentown, PA 18102,

REGINA SCHLITZ  
1401 W. Schwenkmill Road  
Perkasie, PA 18944,

ALEXANDER SICKERT  
10 Pearl Drive  
Doylestown, PA 18901,

DANIEL SLEATOR  
15 Hollenden Place  
Pittsburgh, PA 15217,

SUSANNA STAAS  
4 Hana Lane  
Phoenixville, PA 19460,

STEPHEN J. STRAHS  
921 Melrose Avenue  
Melrose Park, PA 19027,

MARY VOLLERO  
137 N. Spring Street  
Bellefonte, PA 16823

JEANNE ZANG  
310 Challis Lane  
Sewickley, PA 15143

Petitioners,

v.

PEDRO CORTÉS, Secretary of the Commonwealth

Respondent.

**PETITION FOR REVIEW  
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION**

**I. INTRODUCTION**

1. Petitioners are Pennsylvania voters. They bring this lawsuit to challenge the Secretary of the Commonwealth of Pennsylvania's ("the Secretary") certification, without adequate testing, of paperless electronic voting machines for use in Pennsylvania elections that do not and will not reliably and consistently record, tally and weigh the votes of Pennsylvania's citizens or produce any permanent physical record of any elector's actual vote.

2. Petitioners seek through this litigation to compel the Secretary to comply with those requirements of the Pennsylvania Election Code which, among other things, are intended to protect the right to vote and the integrity of the election process.

3. The Secretary has certified for purchase and use in Pennsylvania paperless electronic voting machines and systems that a) have not been adequately tested for reliability, accuracy or security; b) cannot be relied upon to consistently and accurately tally each vote cast; c) do not provide any mechanism to verify that they have properly recorded any individual voter's choices or have properly tallied the votes of Pennsylvania voters; and d) lack meaningful and appropriate security measures to prevent tampering and vote manipulation.

4. As a consequence, the machines do not meet the requirements of the Pennsylvania Election Code because they:

a) Do not retain a "permanent physical record of each vote cast." § 1101-A, 25 P.S. § 3031.1.

b) Are not adequately tested to determine that the machines will be "[s]afely and efficiently usable in the conduct of elections." § 1107-A (11), 25 P.S. § 3031.7 (11).

c) Do not have “acceptable ballot security measures.” § 1107-A (12), 25 P.S. § 3031.7(12).

d) Do not routinely and consistently “record[ ] correctly and compute[ ] and tabulate[ ] accurately every valid vote registered.” § 1107-A (13), 25 P.S. § 3031.7 (13).

e) Are not “suitably designed and equipped to be capable of absolute accuracy.” § 1107-A (11), 25 P.S. § 3031.7(11).

f) Do not “preclude every person from tampering with the tabulating element.” § 1107-A (16), 25 P.S. § 3031.7(16) and § 1107-A (17), 25 P.S. § 3031.7(17).

g) In the case of those electronic voting machines with precinct based tabulation, do not reliably and consistently “generate[ ] a printed record at the beginning of operation which verifies that the tabulating elements . . . are all set to zero.” § 1107-A (16)(v), 25 P.S. § 3031.7(16)(v).

5. Petitioners seek a declaration that the certification of the paperless electronic voting machines identified herein violates those provisions of the Pennsylvania Constitution which protect their right to vote and to have their votes properly counted and weighted in any election, including Pennsylvania Const. Art. I, § 1, (due process), § 5 (providing for free and equal elections and protecting right to vote), § 26 (protecting fundamental civil rights, including the right to vote), and Art. VII, § 6 (requiring uniformity in the laws regulating the holding of elections and guaranteeing the equal protection of laws).

6. Petitioners seek an Order directing the Secretary to decertify those electronic voting systems identified herein as certified for use and purchase in Pennsylvania because the Secretary’s testing procedures are flawed and inadequate.

7. Finally, in addition to any additional relief the facts may show is appropriate upon a trial in this matter, Petitioners seek an order in the nature of a writ of mandamus requiring the Secretary of the Commonwealth to properly and lawfully perform his nondiscretionary duty to re-examine voting systems for which he has received a request from Petitioners pursuant to Pennsylvania Election Code Section 1105-A, 25 P.S. § 3031.5, for re-examination.

## **II. JURISDICTION**

8. The Court has original jurisdiction over this Petition for Review pursuant to 42 Pa. C.S. § 761(a).

## **III. PARTIES**

9. Petitioner Mark Banfield is an adult individual who resides at 419 N. Saddlebrook Circle, Chester Springs, PA 19425. Mr. Banfield is a duly qualified elector of Chester County.

10. Petitioner Sarah Beck is an adult individual who resides at 241 McIntosh Road, West Chester, PA 19382. Ms. Beck is a duly qualified elector of Chester County.

11. Ms. Beck is a duly elected and sworn Judge of Elections of East Bradford Township, Chester County.

12. Petitioner Joan Bergquist is an adult individual who resides at 217 Devon Boulevard, Devon, PA 19333. Ms. Bergquist is a duly qualified elector of Chester County.

13. Petitioner Alan Brau is an adult individual who resides at 483 Sugar Maple Court, Bethlehem, PA 18017. Mr. Brau is a duly qualified elector of Northampton County.

14. Petitioner Lucia Dailey is an adult individual who resides at 132 Clark Street, Clarks Green, PA 18411. Ms. Dailey is a duly qualified elector of Lackawanna County.

15. Petitioner Peter Deutsch is an adult individual who resides at 153 Cherry Lane, Ailquippa, PA 15001. Mr. Deutsch is a duly qualified elector of Beaver County.

16. Petitioner Constance Fewlass is an adult individual residing at 2543 Brownsville Road, Langhorne, PA 19053. Ms. Fewlass is a duly qualified elector of Bucks County.

17. Petitioner Barbara Glassman is an adult individual who resides at 4907 Cabin Run Road, Pipersville, PA 18947. Ms. Glassman is a duly qualified elector of Bucks County.

18. Petitioner MariJo Highland is an adult individual who resides at Center Square Towers Apts., 555 Broad Street, Doylestown, PA 18901. Ms. Highland is a duly qualified elector of Bucks County.

19. Petitioner Janis Hobbs-Pellechio is an adult individual who resides at 106 Beulah Road, Doylestown, PA 18901. Ms. Hobbs-Pellechio is a duly qualified elector of Bucks County.

20. Petitioner Deborah Johnson is an adult individual who resides at 10 Hayden Heights Road, York, PA 17404. Ms. Johnson is a duly qualified elector of York County.

21. Petitioner Robert Maxwell McCord is an adult individual who resides at 135 Fishers Road, Bryn Mawr, PA. Mr. McCord is a duly qualified elector of Montgomery County.

22. Petitioner Andrew McDowell is an adult individual who resides at 1103 Winchester Trail, Downingtown, PA 19355. Mr. McDowell is a duly qualified elector of Chester County.

23. Mr. McDowell is a duly elected and sworn Judge of Elections in East Bradford Township, Chester County.

24. Petitioner James Michaels is an adult individual who resides at 132 Clark Street, Clarks Green, PA 18411. Mr. Michaels is a duly qualified elector of Lackawanna County.

25. Petitioner J. Whyatt Mondesire is an adult individual who resides at 213 E. Phil Ellena Street, Philadelphia, PA 19119. Mr. Mondesire is a duly qualified elector of Philadelphia County.

26. Petitioner Mary Montresor is an adult individual residing at 825 Conewago Creek Road, Manchester, PA. Ms. Montresor is a duly qualified elector of York County.

27. Petitioner Reverend James Moore is an adult individual who resides at 904 East Gowen Avenue, Philadelphia, PA 19150. Rev. Moore is a duly qualified elector of Philadelphia County.

28. Petitioner Cathy Reed is an adult individual who resides at 619 Greenleaf Street, Allentown, PA 18102. Ms. Reed is a duly qualified elector of Lehigh County.

29. Petitioner Regina Schlitz is an adult individual who resides at 1401 W. Schwenkmill Road, Perkasio, PA 18944. Ms. Schlitz is a duly qualified elector of Bucks County.

30. Petitioner Alexander H. Sickert is an adult individual who resides at 10 Pearl Drive, Doylestown, PA 18901. Mr. Sickert is a duly qualified elector of Bucks County.

31. Petitioner Daniel Sleator is an adult individual who resides at 15 Hollenden Place, Pittsburgh, PA 15217. Mr. Sleator is a duly qualified elector of Allegheny County.

32. Petitioner Susanna Staas is an adult individual who resides at 4 Hana Lane, Phoenixville, PA 19460. Ms. Staas is a duly qualified elector of Chester County.

33. Petitioner Stephen J. Strahs is an adult individual who resides at 921 Melrose Avenue, Melrose Park, PA 19027. Mr. Strahs is a duly qualified elector of Montgomery County.

34. Petitioner Mary Vollero is an adult individual who resides at 137 N. Spring Street, Bellefonte, PA 16823. Ms. Vollero is a duly qualified elector of Centre County.

35. Petitioner Jeanne Zang is an adult individual who resides at 310 Challis Lane, Sewickley, PA 15143. Ms. Zang is a duly qualified elector of Allegheny County.



36. Petitioners belong to different political parties, reside in different counties and have been required to use the various electronic voting machines that are the subject of this suit.

37. Each Petitioner cast a ballot in the 2006 Primary Election, each wants to cast a ballot in all future elections, and each wants their future votes and the votes of all Pennsylvanians to be properly counted and weighted.

38. Respondent Pedro Cortés is the Secretary of the Commonwealth and is charged with the general supervision and administration of Pennsylvania's elections laws, including among other things, the duty "to examine and re-examine voting machines, and to approve or disapprove them for use in this State, in accordance with the provisions of [the Election Code]", 25 P.S. § 2621.

#### IV. STATEMENT OF FACTS

39. Direct Recording Electronic voting systems are devices that display ballots with candidates for offices and referendum questions and allow a voter to select his choices either with a push button, a dial or a touch screen and then cast his vote. When the vote is cast, the machine is supposed to record the vote on an electronic storage device or devices in the form of digital markings.

40. The Secretary has certified for use in Pennsylvania elections the following DRE voting machines and associated voting systems:

a. **AVC Edge II electronic voting system**, version 5.0.24, and WinEDS Election Database System, version 3.0.012, made by Sequoia Voting Systems, Inc. The AVC Edge II and all accompanying software is collectively referred to hereafter as "AVC Edge II".

b. **AVC Advantage electronic voting system**, version 10.1.5, made by Sequoia Voting Systems, Inc. The AVC Advantage and all accompanying software is collectively referred to hereafter as "AVC Advantage".

c. **AccuVote TSX touch screen voting machine** version 4.6.4 and GEMS election management system software version 1.18.25 made by Diebold Election Systems, Inc.

The AccuVote TSX and all accompanying software is collectively referred to hereafter as "AccuVote" TSX.

d. **iVotronic direct recording electronic voting system**, version 9.1.4.1 with Unity election management software, version 3.0.1.0, made by Elections Systems & Software, Inc. ("ES&S"). The iVotronic and all accompanying software is collectively referred to hereafter as the "iVotronic".

e. **eSlate version 4.1.3**, and accompanying software made by Hart InterCivic, Inc. The eSlate and all accompanying software is collectively referred to hereafter as "eSlate".

f. **ELECTtronic 1242**, with firmware 5M and 5Ma used with Guardian Election Management System, made by Danaher Industrial Controls. The ELECTronic 1242 and all accompanying software is collectively referred to hereafter as "Danaher 1242".

g. **WINvote electronic voting system**, version 2.0.2, made by Advanced Voting Solutions. The WINvote and all accompanying software is collectively referred to hereafter as "WINvote".

**A. The Accuracy Of The DRE Paperless Electronic Voting Systems Can Not Be Verified By An Independent And Permanent Record Of Each Voter's Vote.**

41. The DRE voting systems identified in paragraph 40 of this Petition (hereinafter called "the certified DREs") are "paperless" because they produce no contemporaneous, external paper record that the voter may review to verify that his vote was accurately recorded by the DRE when he casts it. Instead, the voter's vote is recorded on the DRE's electronic storage device, which uses software that is supposed to convert the voter's selection of, for example, Candidate "A" on the DRE's screen into a digital record. As a result, when voting on the certified DRE machines, the voter has no way of knowing whether the DRE in fact recognizes his selection of "A" as a vote for "A" rather than for "B".

42. Because the certified DRE's are paperless, votes are cast without the simultaneous creation of any printed confirmation or ballot that can be retained by elections officials for comparison with what the machine records electronically. Instead, the votes are tabulated

electronically and the electronic record (or, in some machines, a duplicate of it) is the only record of the number and nature of votes.

43. As a consequence, election officials have no permanent, independent physical record that can be used to audit, or double check, the total vote counts as tallied by the machine.

44. The Pennsylvania Election Code, including especially its mandate that a permanent physical record be provided for every vote cast, required the Secretary to certify only voting machines that can be audited, or double checked, using independent permanent records, verified by the voter as his vote before being cast.

45. The foregoing legal requirement is not met with the certified DREs here because the machines cannot be audited by review of an independent, permanent record of each vote cast, because no voter can see the electronic record before casting his vote to be sure that his vote was properly recognized by the machine and because the votes are stored as electronic data that can be altered or erased.

46. Because there is no permanent, independent physical record that can be used to audit the DRE, either in random audits or following an accusation that the machine has been tampered with or has malfunctioned, there can be no assurance that either the Petitioners' votes or the votes of any other Pennsylvania voter have been properly counted or weighted.

47. The certified DREs have repeatedly malfunctioned in Pennsylvania and in other states, and are known to be vulnerable to malicious tampering, all of which underscores the importance of the Election Law's requirement of a permanent record of each voter's vote that can be used to audit the accuracy of the results reported by the machines.

48. Some certified DREs are capable of producing a paper audit trail. However, the Secretary has not certified any machines with that capability because the DREs' paper trail allegedly operated in a way that would allow later identification of the voter and his votes.

49. In addition, some of the certified DREs contain a Ballot Image Retention (BIR) function, which purports to record electronically each individual's vote. However, because the voter never sees the BIR, the voter cannot verify that it accurately reflects his choices. Moreover, the BIR is the same data which is recorded by the voting system software to generate election results. The BIR thus cannot serve as an independent record of a voter's votes that can be used to conduct an audit of the machine's performance or recount of the election.

**B. The Remarkable History Of Failures Experienced By The DREs When Used In Other States, Coupled With The Failures Of Certified DREs In Pennsylvania, Establish That The Secretary's Process Is Inadequate To Uncover Defects In DREs.**

50. Pennsylvania law requires that the Secretary certify voting machines and systems before they can be purchased or used by any county in an election.

51. The Election Code requires that, during the certification process, each machine vendor demonstrate to the Secretary that its machine is capable of "absolute accuracy" and the counting of "every" valid vote. § 1107-A (11), (13), 25 P.S. § 3031.7(11), (13). The Secretary of State is required to "examine" every machine, § 1107-A, 25 P.S. § 3031.7, and ascertain if it meets the statutory standard of absolute accuracy, among others, and of having ballot security sufficient to "preclude . . . tampering." § 1107-A (12), 25 P.S. § 3031.7(12).

52. The Secretary's examination procedures did not, and were not reasonably designed to, adequately determine whether the certified DREs meet the requirements of the Election Code for accuracy and security, as evidenced by the number of problems experienced by

DREs in other states and in Pennsylvania that were not uncovered by the Secretary's procedures and which should have and would have been uncovered in any reasonable process designed to investigate the security of electronic voting machines.

### **1. DRE Failures in Other States**

53. The AVC Edge II and AVC Advantage lost votes, failed to register votes, "switched" votes from a selected candidate to a non-selected candidate, failed to record votes stored on data cartridges and failed adequately and accurately to process and retain voting data while being used in other states.

54. For example, during the November 2002 General Election in New Mexico, the AVC Edge machines used in one county lost almost 13,000 votes. In the November 2004 General Election, the AVC Edge's touch screen machines repeatedly registered votes for one presidential candidate when the voter was attempting to vote for that candidate's opponent.

55. In a Florida election, precincts that used the AVC Edge caused "undervote" rates (where a cast ballot is not recorded) as high as 17%. In another election, involving only a single ballot question, certain AVC Edge machines failed to register any votes.

56. In the 2004 general election in New Mexico, some precincts had very high presidential undervote rates when voters used Sequoia Advantage voting machines on Election Day but not when using optically scanned paper ballots in early voting or absentee voting. The president of a New Mexico vendor for Sequoia gave deposition testimony that this was a predictable result of the design of the Sequoia AVC Advantage machine.

57. The iVotronic lost votes, registered "phantom" votes, counted votes twice, inaccurately tabulated votes, switched votes, failed to produce "zero tapes", reached its capacity and started counting backwards, and recorded wrong votes during elections in other states.

58. For example, during a 2002 election in Miami-Dade County, Florida, certain iVotronic machines appeared to have lost the votes of 8.2% of the voters who signed in at the polls.

59. In the March 2006 Texas Primary Election, iVotronic machines used in Jefferson County counted more than 1500 votes twice.

60. The eSlate recorded “phantom” votes, lost votes, switched votes because of a machine “default” setting; failed to boot and froze while being used during elections in other states.

61. For example, in the March 2006 Texas Primary Election, eSlate machines used in Tarrant County, county officials reported 100,000 “phantom” votes (i.e., votes that were not cast by voters).

62. The AVC Edge, iVotronic and eSlate machines involved in the incidents described above were models either essentially identical to or identical to those certified by the Secretary, particularly in relation to the machine and software functions that caused the failures outlined above. The Secretary did not confirm whether the malfunctions described above had been fixed on the versions of the machines or software certified in Pennsylvania.

## **2. DRE Failures in Pennsylvania Elections**

63. Because it is impossible to conduct an independent audit on the performance of the certified DREs, it is likewise impossible to know exactly when, where and how frequently their use has harmed Petitioners and other Pennsylvania voters. Even without the ability to audit, however, the defects in the certified DREs used in Pennsylvania have become apparent as they were used in actual elections, rather than discovered, as the legislature intended, by the Secretary during a properly conducted certification process.

64. During the May 16, 2006 Primary Election, iVotronic machines used in Allegheny and Centre Counties failed to print the “zero tapes” required under the Election Code to demonstrate that no unlawful votes were stored on the machines before the election started. In both counties, some iVotronic machines failed to print “zero tape” reports at the opening of the polls during the day, so voters had no assurance that votes had not been stored on the machine before the election began. After voters had cast their votes on some iVotronic machines, the machines generated a “zero tape” (i.e., at a time when the machines should **not** have reported zero votes) or generated tapes that did not contain all necessary identifying information.

65. During the May 2005 Primary Election in Berks County, the ELECTronic 1242 machines used in four precincts failed to record the votes cast because of programming errors. Because of the inability to determine the votes lost by the ELECTronic 1242 by consulting a permanent record of the vote verified by the voter, the Board of Elections was forced to certify election results without counting any votes from the four precincts.

66. During the May 2006 Primary Election, approximately 200 Danaher 1242 voting machines used in Philadelphia County failed to activate or were unable to record write-in votes, thereby preventing some Philadelphia voters from voting.

67. Immediately before the May 2006 Primary, Diebold acknowledged a severe security breach in its machines, including the AccuVote TSX, that would make it possible to alter election results by loading malicious software directly into the machine.

68. In the November 2004 Election, a DRE since decertified by the Secretary, the Unilect Patriot voting system, failed to record 10,000 votes in three Pennsylvania counties as the result of a machine defect that had not been discovered by the Secretary during his certification process.

**C. The Secretary's Certification Process Is Flawed For The Additional Reason That It Ignored Documented Security Flaws In The DREs That Allow Them To Be Tampered With And Their Results Altered Or Obliterated.**

69. The certified DRE voting systems have serious, documented security vulnerabilities that may be exploited to alter the results of an election and thus deprive Petitioners of their rights under the Pennsylvania Constitution and laws.

**1. AccuVote TSX**

70. During 2005, for example, computer security investigator Harri Hursti, PhD. issued a report (hereinafter called "Hursti I") demonstrating the ease with which the AccuVote OS voting machine could be tampered with to alter vote totals in an undetected manner. Specifically, Dr. Hursti reported that an individual with only brief access to the machine could remove its memory card, modify the card's scripts, alter the vote counts stored on the card in a manner that would not be detected by the post-election canvass procedures and then replace the card in the machine.

71. While the Diebold AccuVote OS was not certified by the Secretary, the Secretary did certify the AccuVote TSX, which suffers from the same lack of security features, including the removable memory card, as the AccuVote OS and can thus be tampered with in the same facile way.

72. In 2006, Dr. Hursti examined the AccuVote TSX itself and found that it suffered from security flaws even more dramatic than those found in the AccuVote OS. Dr. Hursti found that anyone with brief access to the AccuVote TSX could readily corrupt the machine's application loader software, the operating system software that the application loader loads each time the



machine is used, and/or the voting application software in a way that would be difficult to detect and which would render the machine vulnerable to tampering despite future efforts to secure it.

73. Specifically, Dr. Hursti reported that a person could tamper with the AccuVote TSX machine using only a standard PC memory card, naming the files according to Diebold's naming scheme, and a minute or two of access to the AccuVote TSX machine during which the PC memory card could be used to infect the machine's operating system with a malicious code.

74. The AccuVote TSX runs on the Windows CE operating system. The central tabulator computer software used in conjunction with the AccuVote TSX runs on the Windows operating system. The Windows and Windows CE operating system have a history of security vulnerabilities and tampering thus making votes cast on the AccuVote TSX similarly insecure and subject to tampering.

## **2. AVC Edge II**

75. The AVC Edge II has inadequate password protocols leaving the system vulnerable to the installation of a vote manipulating program by a person with access to the machine for a short time. A person with access to the AVC Edge II can replace its "chip" with one that will re-program the machine and cause it, for example, it to give all votes cast to a particular candidate.

76. The AVC Edge II's lack of security would also permit unauthorized users to easily modify unencrypted data stored on memory cards, including ballot definitions and voting results in order to effect election outcomes.

## **3. eSlate**

77. The eSlate voting machines are connected to a central terminal at the polling place, where the data from each individual machine is transmitted in unencrypted form along

cables. While the ballot data is being transmitted, it may be accessed by unauthorized people, monitored or even altered.

78. The Secretary identified this problem in his certification report but certified the system anyway.

#### **4. iVotronic**

79. The iVotronic works using a personal electronic ballot (“PEB”) to activate and deactivate numerous iVotronic voting machines. The PEB contains control circuitry and software purportedly to ensure correct loading of the ballot configurations, vote images and totals. However, because it is inserted and removed again and again from different machines, any corruption, malfunction or contamination in one machine (or in the PEB itself) may be transmitted to all other machines. In addition, the use of a device like a PEB that has to be moved from place to place increases the number of occasions during which it is exposed to tampering and theft.

80. The central tabulator computer software used in conjunction with the iVotronic runs on the Windows operating system. The Windows operating system itself has a history of security vulnerabilities and tampering thus making votes cast on the iVotronic similarly insecure and subject to tampering.

#### **D. The Secretary’s Certification Procedures Are Inadequate Because They Do Not Adequately Test The DRE Software To Determine Whether It Renders The Machine Defective Or Vulnerable To Security Breaches.**

81. The Secretary’s testing procedures are not suitably designed and do not even approximate testing of the type that is customary in the information technology industry for systems that perform important tasks requiring a high level of security.

82. In order to determine if a software program contains the programming code necessary to meet Pennsylvania's standards, the Secretary or his designee must review the source code in a procedure called a code "audit." Upon information and belief, the Secretary or his designee do not perform such a review of the source code.

83. The certified DRE voting systems use proprietary firmware and software either designed by the vendor or which the vendors have designated as "commercial off-the-shelf" programs, such as the Microsoft Windows operating system, the Microsoft Windows CE operating system and the Microsoft Access database application. These software programs are not disclosed to state or county officials. The Secretary, therefore, cannot verify that the computer programs used in Pennsylvania elections are the same as the programs he certified, or even whether the programs function as the vendor represented they would at the time of certification.

84. By certifying the DREs without adequate information about the software they use or an audit of the software source code, the Secretary has failed in his obligation to certify voting machines only after the process and review required by the Election Code.

**E. The Secretary's Certification Process, To The Extent It Relied Upon Federal ITA Certification Of The DRE Machines, Was Flawed Because Pennsylvania Law Requires A Higher Standard Than ITA Certification And Because The Secretary Knew That ITA Certification Was Profoundly Flawed.**

85. Under Pennsylvania law, the Secretary may not certify a DRE machine unless that machine has also been certified by Independent Testing Authorities ("ITA") who test the machines under standards developed by the Federal Election Commission.

86. The Secretary may not rely upon the approvals granted to the DREs in the Federal ITA process, because Pennsylvania certification requirements as outlined in the Pennsylvania Election Code are more stringent than those in the ITA process.

87. The ITA applies security standards in the testing of electronic voting systems that do not and cannot reveal whether the system is vulnerable to tampering in the hardware, firmware or software.

88. For example, in 2006, computer security expert, Harri Hursti, discovered three different flaws in the software of the Diebold TSX voting machines challenged in this lawsuit even after the software had been certified by the ITA and by the Secretary.

89. ITAs routinely interpret and apply industry security standards in such a way to avoid examining or testing software that the standards, properly interpreted, require them to examine and test.

90. For example, the standards require examination and testing of any third-party software used in a voting system unless the software qualifies as commercial off-the-shelf ("COTS"), meaning that it is used in the voting system with no customization or modification by the voting system vendor.

91. Diebold Election Systems, Inc. uses the Windows CE operating system in the AccuVote TSX voting machines certified by the Secretary.

92. Windows CE cannot be used in a computerized device like the AccuVote TSX without customization and modification and thus it can no longer be considered commercial, off-the-shelf software.

93. Nonetheless, the ITA that recommended certification of the AccuVote TSX has done so without examining or testing the customized and modified Windows CE operating system used in the machine.

94. As the Secretary is aware, any reliance upon ITA approvals or testing is no assurance that DRE machines comply with Pennsylvania law because:

- (a) The ITAs are fraught with conflicts of interest;
- (b) The ITAs are hired and paid for exclusively by the voting system manufacturers;
- (c) The ITAs are not, and have never been, regulated by any agency of the federal government;
- (d) The ITAs show their test results only to the manufacturers, leaving it to the manufacturers to determine whether the results will be shared with state or local elections officials or with the public; and
- (e) The ITAs have repeatedly approved voting systems later found to have security vulnerabilities that would permit outside hackers, elections officials or employees of the voting machine vendors to alter the results of elections without detection.

**F. The Secretary Has Improperly Denied Requests for Re-Examination of Voting Systems**

95. By letter dated March 7, Petitioner Alan Brau asked the Secretary for a re-examination of the Advanced WINvote electronic DRE voting system. Petitioner Brau included a check in the amount of \$450.00 and the signatures of 10 qualified registered electors of Northampton County. See Exhibit "A".

96. By letter dated March 27, 2006, the Secretary denied Petitioner Brau's request stating that "no credible evidence has been provided to this Department or come to our attention that any change or modification has been made to this system." Under the applicable law, this is not a ground for denying a re-examination. See Exhibit "B".

97. By letter dated March 25, 2006, the Secretary received a request for re-examination of the AccuVote TSX voting system. The letter specifically referenced "Hursti P"

and was accompanied by a check in the amount of \$450.00 and the signatures of 14 qualified registered electors of Lehigh County, including Petitioner Cathy Reed. See Exhibit “C”.

98. By letter dated April 18, 2006, the Secretary denied the request to re-examine the AccuVote TSX by stating that “no credible evidence has been provided to this Department or come to our attention that any change or modification has been made to this system.” Under the applicable law, this is not a ground for denying a re-examination. See Exhibit “D”.

99. By letter dated March 24, 2006, the Secretary received a request for re-examination of the ELECTronic 1242 voting system. The letter specifically referenced “Hursti I” and was accompanied by a check in the amount of \$450.00 and the signatures of 23 qualified registered electors of Bucks County, including Petitioner Constance Fewlass. See Exhibit “E”.

100. By letter dated April 7, 2006, the Secretary denied the request to re-examine the ELECTronic 1242 by stating that “no credible evidence has been provided to this Department or come to our attention that any change or modification has been made to this system.” Under the applicable law, this is not a ground for denying a re-examination. See Exhibit “F”.

101. By letter dated January 20, 2006, the Secretary received a request for re-examination of the iVotronic voting system. The letter specifically referenced “Hursti I” and was accompanied by a check in the amount of \$450,000 and the signatures of 33 qualified registered electors of Chester County, including Petitioner Joan Bergquist. See Exhibit “G”.

102. By letter dated February 3, 2006, the Secretary denied the request to re-examine the iVotronic by stating that “no new facts are brought to light concerning potential irregularities or deficiencies in the system.” Under the applicable law, this is not a ground for denying a re-examination. See Exhibit “H”.

**G. Petitioners Are Entitled To Injunctive Relief *Pendente Lite* Because The Conduct Of Elections In Violation Of Their Rights Under The Election Code And Constitution Will Cause Them Irreparable Harm, Because They Are Likely To Prevail On The Merits And Because The Balance Of Equities And The Public Interests Favor Petitioners**

103. Approximately fifty-six out of sixty-seven counties in the Commonwealth will use one or more of the certified DREs in the upcoming November election. Consequently, the overwhelming majority of Pennsylvania voters, including the Petitioners, will be required to vote on the problem-plagued, insecure and unreliable certified DRE systems in the November elections.

104. Petitioners will suffer irreparable harm if faulty machines that do not function properly and have security flaws are used in Pennsylvania elections because their votes may be ignored, counted incorrectly, given inadequate weight and the election may result in the certification of winners not supported by the majority of voters.

105. Petitioners have no adequate remedy at law.

106. The public interest would not be harmed and would instead be benefited by an injunction *pendente lite*.

107. The inaccuracy, unreliability and lack of a permanent record not only violates the Pennsylvania Election Code and Constitution, but in addition has eroded the public's confidence in the election process because there can be no audit or effective recount following machine failures or accusations of unreliability or tampering. The Pennsylvania public's lack of confidence is reflected in the results of a May 10, 2006 poll of Pennsylvanians, conducted by Zogby International for OpEdNews.com, which found that 87% of Pennsylvanians preferred a paper record of their vote to ensure that their vote was counted the way they intended.

108. The balance of hardships weighs strongly in Petitioners' favor and against the Secretary since upcoming elections can be conducted easily in any manner that complies with Pennsylvania law, including use of paper ballots tabulated with optical scanners.

109. The public interest in protecting the right to vote, in preserving the integrity of the electoral process, in having electronic voting systems that do not violate Pennsylvania's Constitution or statutory law weighs heavily in Petitioners' favor.

110. To the extent the Secretary contends that the certified DREs must be used in order to insure voting access to disabled Pennsylvanians, that contention does not shift the balance of equities on any motion for temporary injunctive relief.

111. Alternative voting methods exist, including some already certified by the Secretary, that provide access to disabled voters that is as good as, if not better, than any access provided by the certified DRE machines. Consequently, the relief sought in this case would not jeopardize access to independent and private voting by disabled voters or in any way run afoul of federal or state laws.

#### **COUNT I**

##### **Violation Of The Pennsylvania Election Code, § 1101-A, 25 P.S. § 3031.1**

112. Petitioners incorporate by reference as of fully set forth herein each of the preceding allegations.

113. The Secretary's certification for use in Pennsylvania elections of the DRE machines identified in paragraph 40 of this Petition violates the Pennsylvania Election Code Section 1101-A, 25 P.S. § 3031.1, because the machines do not create a permanent physical record which can be retained. Retention of a permanent physical record that the voter can verify is necessary for a meaningful, independent audit or recount of the voting results electronically



recorded, stored, tallied and reported by the certified DREs and to assure compliance with the other provisions of the Pennsylvania Election Code.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

a. Direct the Secretary immediately to de-certify the DRE voting systems identified in paragraph 40 of this Petition;

b. Declare that the DRE electronic voting systems identified in paragraph 40 of this Petition violate the Pennsylvania Constitution and Pennsylvania Election Code because they are used without the creation of a voter verified independent record that can be used to audit voting results; and

c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

## **COUNT II**

**Violation Of The Pennsylvania Election Code, § 1107-A, 25 P.S. § 3031.7(11), § 3031.7(12), § 3031.7(13), § 3031.7(16) and § 3031.7(17).**

114. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

115. The certification and use in Pennsylvania elections of the DRE voting systems identified in paragraph 40 of this Petition violate Pennsylvania Election Code Section 1107-A, 25 P.S. § 3031.7 because the DREs' operating defects, the lack of a voter verifiable physical record of the voter's intent and security flaws that allow tampering or unauthorized access into the machines demonstrate that the certified DREs:

(a) are not "suitably designed for the purpose used," or "safely and efficiently useable in the conduct of elections" or "designed and equipped to be capable of absolute

accuracy” as required by Pennsylvania’s Election Code Section 1107-A, 25 P.S. § 3031.7(11);

- (b) are not able “to prevent tampering with or substitution of any ballots” or “tampering with the tabulating element” as required by Sections 1107-A (12), (16)(iii) and (17)(1), 25 P.S. §§ 3031.7(12), (16)(iii) and (17)(i);
- (c) do not “record. . . correctly. . . every valid vote registered” as required by Section 1107-A (13), 25 P.S. § 3031.7(13);
- (d) do not provided “acceptable ballot security procedures,” Section 1107-A (12), 25 P.S. § 3031.7(12); and
- (e) do not “record [ ] correctly and compute[ ] and tabulate [ ] accurately every valid vote registered,” Section 1107-A (13), 25 P.S. § 3031.7(13).

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

- a. Direct the Secretary to immediately de-certify the DRE systems identified in paragraph 40 of this Petition;
- b. Declare that the DRE electronic voting systems identified in paragraph 40 of this Petition do not meet the requirements of Pennsylvania Election Code §§ 1107-A, 25 P.S. §§ 3031.7(11), (12), (13), (16) and (17); and
- c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

**COUNT III**

**Violation Of The Pennsylvania Election Code, § 1107-A, 25 P.S. § 3031.7(11),  
25 P.S. § 3031.7(12), 25 P.S. § 3031.7(13)**

116. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

117. The Secretary's testing procedures were superficial and insufficient to determine whether any DRE voting systems identified in paragraph 40 of this Petition was:

- a. "Suitably designed" for its purpose as required by Pennsylvania Election Code Section 1107-A (11), 25 P.S. § 3031.7 (11);
- b. Could be "safely and efficiently useable in the conduct of elections" as required by Pennsylvania Election Code Section 1107-A (11), 25 P.S. § 3031.7(11);
- c. "With respect to the counting of ballots cast at each district, is suitably designed and equipped to be capable of absolute accuracy" as required by Pennsylvania Election Code Section 1107-A (11), 25 P.S. § 3031.7(11);
- d. Provided "acceptable ballot security procedures," as required by Pennsylvania Election Code Section 1107-A (12), 25 P.S. § 3031.7(12); and
- e. Could "record[ ] correctly and compute[ ] and tabulate[ ] accurately every valid vote registered," as required by Pennsylvania Election Code Section 1107-A (13), 25 P.S. § 3031.7(13).

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

- a. Direct the Secretary immediately to de-certify all the DRE voting systems identified in paragraph 40 of this Petition;
- b. Direct the Secretary of the Commonwealth to establish uniform testing

criteria for the certification of voting systems that comply with the Pennsylvania Election Code; and

c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

#### **COUNT IV**

#### **Violation Of The Pennsylvania Election Code, § 1117-A, 25 P.S. § 3031.17**

118. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

119. The DRE electronic voting systems identified in paragraph 40 of this Petition cannot meet the requirements of Pennsylvania Election Code Section 1117-A, 25 P.S. § 3031.17, because they do not retain a voter verified record that permits election officials to perform a “statistical recount of a random sample of ballots after each election using manual, mechanical or electronic devices of a type different than those used for the specific election.”

120. Because the DRE voting systems identified in paragraph 40 of this Complaint do not permit statistical recounts and because the Secretary has not otherwise provided for recounts through the use of manual, mechanical or electronic devices of types different than those used in the election, the voting systems do not comply with the Pennsylvania Election Code and the Secretary’s certification process was flawed in that it certified the voting systems in spite of this non-compliance.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

a. Direct the Secretary of the Commonwealth to de-certify the DRE voting systems identified in paragraph 40 of the Petition;

b. Declare that use of the certified DRE voting systems violates Pennsylvania Election Code Section 1117-A, 25 P.S. § 3031.17; and

c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

#### **COUNT V**

#### **Violation Of The Pennsylvania Election Code, § 1701, 25 P.S. § 3261, § 1404, 25 P.S. § 3154**

121. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

122. Three registered voters in the Commonwealth of Pennsylvania may obtain a recount in a precinct upon the filing a petition alleging fraud or error in election results with the Court of Common Pleas Pennsylvania Election Code, § 1701, 25 P.S. § 3261.

123. The Pennsylvania Election Code sets out a procedure for the computation of election returns that includes a procedure for recounts in the event of a discrepancy between the number of voters and the number of ballots. See § 1404, 25 P.S. § 3154. However, those procedures cannot be used when an election is conducted with the certified DRE voting systems identified in paragraph 40 of this Petition because the systems do not retain a voter verified independent record that can be used to audit the machine results.

124. The DRE voting systems identified in paragraph 40 of this Petition do not meet the requirements of Pennsylvania Election Code Sections 1404 and 1701, 25 P.S. § 3154, § 1701, 25 P.S. § 3261, because the lack of a voter verifiable physical record of each voter's choices prevents registered voters from exercising their right to demand a recount upon Petition to the Court of Common Pleas alleging fraud or error in election results.

125. The Secretary's certification of the DRE voting systems identified in paragraph 40 of this Petition despite the fact that their use denies registered voters of their recount rights was improper.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

- a. Direct the Secretary immediately to decertify the DRE voting systems identified in paragraph 40 of this Petition;
- b. Declare that use of the certified DRE voting systems denies registered voters their recount rights under the Pennsylvania Election Code; and
- c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

#### **COUNT VI**

#### **Violation Of The Pennsylvania Election Code, § 1105-A, 25 P.S. § 3031.5**

126. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

127. Pennsylvania Election Code Section 1105-A, 25 P.S. § 3031.5 requires the Secretary to re-examine a previously certified electronic voting system upon receipt of at least 10 signatures of qualified registered electors and the payment of a \$450.00 filing fee. The Secretary does not have discretion under Section 1105A, or otherwise, to refuse properly made requests for a re-examination but, instead, must undertake same.

128. The Secretary has improperly denied at least four valid requests for re-examination under Section 1105-A, one of which was filed by Petitioners Brau, Reed, Fewlass and Bergquist.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

a. Direct the Secretary to re-examine voting systems in accordance with the request made on him by Petitioners Brau, Reed, Fewlass and Bergquist;

b. Declare that the Secretary did not comply with Pennsylvania Election Code Section 1105-A, 25 P.S. § 3031.5, in connection with his responses to the request of Petitioners Brau, Reed, Fewlass and Bergquist for re-examination; and

c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

#### **COUNT VII**

129. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

130. The Secretary has failed to adopt uniform, rigorous testing procedures that would adequately address the security, reliability and accuracy of voting systems.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

a. Direct the Secretary of the Commonwealth to establish uniform testing criteria for the certification of all voting systems that will adequately address all requirements of the Pennsylvania Election Code, including those requirements directed to the security, reliability and accuracy of the voting systems; and

b. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

**COUNT VIII**  
**Violation Of The Pennsylvania Constitution, Article I, § 5**

131. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

132. Article I, Section 5 of the Pennsylvania Constitution protects the rights of all Pennsylvanians, including Petitioners, to vote by guaranteeing that “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

133. The Secretary’s certification of the DRE voting systems identified in paragraph 40 of this Petition, and their subsequent use in Pennsylvania’s elections has caused and will continue to cause violations of and interference with Petitioners’ suffrage rights by making it likely that a significant number of votes will not be counted accurately, or at all.

134. The problems caused and which are likely to be caused by the certified DRE voting systems create the risk that persons for whom the majority of voters have not cast their ballots will be declared the election winners and will take office, in contravention of the very essence of our democracy.

135. Petitioners’ rights under Article I of the Pennsylvania Constitution include not only the right to have their own votes counted but also the right to see that the votes of their fellow citizens will be counted correctly, thereby assuring Petitioners that their votes will have the proper weight and that Pennsylvania’s office holders are democratically elected.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against Respondents and:

a. Direct the Secretary to immediately de-certify the DRE voting systems identified in paragraph 40;



b. Declare that, for all the reasons identified above, the certified DRE voting systems violate the Pennsylvania Constitution; and

c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

**COUNT IX**  
**Violation Of The Pennsylvania Constitution, Article I, § 26**

136. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

137. Pennsylvania Constitution Article I, § 26 provides that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”

138. The Secretary’s certification of the DRE voting systems identified in paragraph 40 of this Petition, and their subsequent use in Pennsylvania elections, threatens Petitioners’ fundamental civil right to vote because the voting systems’ defects and security flaws create the risk that Petitioners, together with other Pennsylvania voters, have their votes rendered meaningless or, worse yet, deemed cast for a candidate for whom they did not vote.

139. Petitioners’ equal protection rights under the Pennsylvania Constitution are likewise at risk because, while they are compelled to vote in counties using the certified DRE voting systems, other registered voters in Pennsylvania may vote in precincts or counties using voting systems, such as verifiable paper ballots that are counted by hand or by optical scanners, that do not suffer from the defects identified in this Petition.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

- a. Direct the Secretary of the Commonwealth de-certify the DRE voting systems identified in paragraph 40 of this Petition;
- b. Declare that the use of the certified DRE voting systems violates the Pennsylvania Constitution; and
- c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

**COUNT X**  
**Violation Of The Pennsylvania Constitution, Article VII, § 6**

140. Petitioners incorporate by reference as if fully set forth herein each of the preceding allegations.

141. Article VII, Section 6 of the Pennsylvania Constitution provides that “all laws regulating the holding of elections by the citizens . . . shall be uniform throughout the state.”

142. The DRE voting systems identified in paragraph 40 of this Petition are not used in the counties or precincts of the Commonwealth that continue to use voting systems that include effective mechanisms to insure that voters can cause meaningful audits of election results and exercise their rights to demand recounts under the Election Code.

143. The Constitution’s requirement of uniform elections is not met when some counties of the Commonwealth use the certified DRE voting systems while other counties use, for example, paper-ballot based voting that permits election audits.

144. Because the likelihood of an inaccurate tally that cannot be audited is greater in counties using the certified DRE voting systems than in counties that use systems that permit independent recounts upon an allegation of error or fraud, the use of the certified DRE voting systems threatens to create an imbalance in the weight given to the votes in the various counties,

thereby depriving all Pennsylvania citizens, including the Petitioners, of the uniformity rights and equal protection rights secured under the Pennsylvania Constitution.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary and:

- a. Direct the Secretary immediately to decertify the DRE voting systems identified in paragraph 40 of this Petition;
- b. Declare that the use of various auditable and non-auditable voting systems in Pennsylvania violates the uniformity provisions of the Pennsylvania Constitution; and

c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

Respectfully submitted,

---

MARY E. KOHART  
Attorney I.D. No. 37191  
DRINKER BIDDLE & REATH LLP  
One Logan Square  
18<sup>th</sup> & Cherry Streets Philadelphia, PA 19103  
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MICHAEL CHURCHILL  
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Public Interest Law Center of Philadelphia  
125 S. 9<sup>th</sup> Street, Suite 700  
Philadelphia PA 19107  
215-627-7100

LOWELL FINLEY  
(*pro hac vice* motion pending)  
Law Offices of Lowell Finley  
1604 Solano Avenue  
Berkeley, CA 94707-2109  
Tel. 510-290-8823  
Fax. 415-723-7141

**CERTIFICATE OF SERVICE**

I, Mary E. Kohart, hereby certify that the foregoing Petition for Review and Notice to Plead was served upon the following via certified mail, return receipt requested:

Honorable Pedro A. Cortés  
Secretary of State  
Commonwealth of Pennsylvania  
Bureau of Commissions, Elections and Legislation  
210 North Office Building  
Harrisburg, PA 17120

Mr. Tom Corbett  
Office of Attorney General  
14<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Dated: August 15, 2006

\_\_\_\_\_  
Mary E. Kohart

Honorable Pedro A. Cortes, Secretary of the Commonwealth  
Department of State  
Bureau of Commissions, Elections and Legislation  
210 North Office Building  
Harrisburg, PA. 17120

Re: Electronic Voting Machines purchased by Northampton County

Secretary Cortes:

Pursuant to 25 PS. § 3031.5, on behalf of the undersigned electors of the Commonwealth of Pennsylvania, we hereby request a re-examination of the electronic voting machine system that has been purchased by Northampton County (WINvote from Advance Voting Solutions).

We enclose at least ten (10) certifications of duly registered electors in the Commonwealth of Pennsylvania who seek this re-examination. We have enclosed a check for \$450 payable to the Treasurer of the Commonwealth of Pennsylvania.

It would seem to me that a rejection of a reasonable request from the voting citizens of this Commonwealth would represent a victory of narrow interests over the interests of the general public, whom you were appointed to serve.

We request the following:

Northampton County must provide information about this equipment, including it's name and model numbers, the names of the manufacturers of all hardware and software that are used for the system, the names of the software designers, how security of the vote is maintained through the steps of data collection and maintenance, and NASED Number. We request as well the specific steps that were taken in the certification process by the Commonwealth, and since this was a "certification with restrictions", what steps have been taken to insure that these restrictions have been addressed and remediated.

We also request independent testing that is free of manufacturer or government influence. This may include testing by computer experts to see if the system can be "hacked".

Respectfully,

/signed/  
Alan Brau, MD  
483 Sugar Maple Court  
Bethlehem, PA 18017  
abrau@aol.com

cc: Northampton County Council



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
302 North Office Building  
Harrisburg, PA 17120

PEDRO A. CORTÉS  
Secretary of the Commonwealth

Telephone: (717) 787-8727  
Fax: (717) 787-1734  
Website: [www.dos.state.pa.us](http://www.dos.state.pa.us)

March 27, 2006

Alan Brau, MD  
483 Sugar Maple Court  
Bethlehem, PA 18017

Re: Request for Voting System Re-examination

Dear Dr. Brau:

The Department of State has reviewed your letter of March 7, 2006, requesting that the Secretary of the Commonwealth re-examine the Advanced Voting Solutions WINvote electronic voting system that was examined in Harrisburg on September 19, 2005 and properly certified on February 16, 2006.

Your request seeking re-examination is insufficient to require a re-examination of the WINvote electronic voting system. Therefore, the Secretary declines to conduct the examination requested and returns herewith the \$450 check that accompanied your request.

Certification of electronic voting systems in Pennsylvania must meet two testing requirements. Section 1105-A(a) of the Election Code, 25 P.S. § 3031.5(a), requires testing by a federally recognized independent testing authority (ITA). Section 1107-A of the Election Code, 25 P.S. § 3031.7, lists seventeen separate points that must be examined by Pennsylvania before certification may occur. As stated in the Secretary's certification report issued on February 16, 2006, the WINvote system fully met both the federal and state requirements. Since that date, no credible information has been provided to the Secretary or come to his attention that any change or modification has been made to this system.

The Department takes requests for re-examination very seriously and acted favorably on two such requests last year. However, if no new facts are brought to light concerning potential irregularities or deficiencies in a system, there is no reasonable basis to subject a system to a re-examination, pursuant to 25 P.S. § 3031.5(d). In the case of the WINvote system, there is no genuine prospect that a re-examination would reveal anything that was not revealed in the examination conducted on September 19, 2005.

Alan Brau, MD  
March 27, 2006  
Page 2

With regard to the specific requests in your letter, the Secretary would like to direct you to his February 17, 2006 Certification Report of the WINvote system, which can be found on the Department of State's website under the Bureau of Commissions, Elections and Legislation.

For these reasons, the Secretary declines to conduct the request re-examination.

Sincerely,



Pedro A. Cortés

Enclosure



To: Honorable Pedro A. Cortés  
 Secretary of State  
 Commonwealth of Pennsylvania  
 Bureau of Commissions, Elections, and Legislation  
 210 North Office Building  
 Harrisburg PA 17120

Re: Examination/Reexamination of Electronic Voting System in  
 Lehigh County Pennsylvania pursuant to  
 25 P.S. Sec. 3031.5 (a) and (b)

Dear Sir:

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed ten (10) in number.
3. We respectfully request that the Secretary of State for the Commonwealth of Pennsylvania examine/reexamine the electronic voting system used in Lehigh County Pennsylvania pursuant to 25 P.S. Sec 3031 (a) of the Pennsylvania Election Code.

3a. In denying certification to the Diebold AV-OS voting system, the Pennsylvania Secretary of State relied upon investigator, Harri Hursti's, successful demonstration in Florida of a results-altering, undetectable "hack" via a security vulnerability in the memory cards used in Diebold voting systems. At the end of his report on the Florida investigation, Harri Hursti stated:

"The architecture of other manufacturers should be examined for similar vulnerabilities."

The full report on Hursti's study is available at <http://www.blackboxvoting.org/BBVreport.pdf>.

The only reasonable reading of Mr. Hursti's recommendation is as a call for a broad examination of the overall hardware, firmware and software architecture of each voting system for vulnerabilities to tampering, rather than as a narrow recommendation for examination of memory cards. Another voting system may not place as many major functions in the memory card or employ interpreted code there, but may nonetheless have major vulnerabilities in other parts of its architecture. Anything less than a full review of the overall architecture by an independent expert assigned the task of trying to falsify results by exploiting any vulnerable points discovered could very well fail to identify such vulnerabilities. The model for such a thorough examination is the 2004 RABA Technologies, LLC "red team attack" on the Diebold AV-TS touchscreen voting system that was commissioned by the Maryland Department of Legislative Services. The report on that examination is available at [www.raba.com/press/TA\\_Report\\_AccuVote.pdf](http://www.raba.com/press/TA_Report_AccuVote.pdf).

We hereby request that the re-examination of the Diebold TSx model voting machine include examination by qualified independent computer security experts of, and attempts to exploit vulnerabilities in, the entire system's architecture. The re-examination should be modeled upon, and be at least as comprehensive and rigorous as, the Harri Hursti and RABA Technologies examination.

4. We have enclosed a check payable to the Treasurer

of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).

5. We respectfully request that pursuant to 25 P.S. Sec. 3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.

#### VERIFICATION

We, the undersigned, state that the facts set forth in this document are true and correct to the best of our knowledge, information, and belief. We acknowledge that this verification is made subject to the penalties of 18 Pa. C.S. Sec. 4909, relating to unsworn falsification to authorities.

Dated:      March 25, 2006

Re: Examination/Reexamination of Electronic Voting System (Page 1 of 2)

Re: Examination/Reexamination of Electronic Voting System (Page 2 of 2)

Cathy Reed  
Signature of Registered Voter  
Cathy Reed  
Printed Name of Registered Voter  
619 Greenleaf St  
Address  
Allentown Pa 1802

Janita Swanojsky  
Signature of Registered Voter  
Janita Swanojsky  
Printed Name of Registered Voter  
5615 N. Coplay Rd.  
Address  
Whitehall PA 18052

Deborah Dougherty  
Signature of Registered Voter  
Deborah Dougherty  
Printed Name of Registered Voter  
592 Catasaugua Ave.  
Address  
Whitehall, PA 18052

Donna S. Petrus  
Signature of Registered Voter  
Donna S. Petrus  
Printed Name of Registered Voter  
6013 Beverly Hill Rd  
Address  
Coopersburg, PA 18036

Winifred Crossman  
Signature of Registered Voter  
Winifred Crossman  
Printed Name of Registered Voter  
920 Evergreen St  
Address  
EMMAUS PA 18049

Alfred Vega  
Signature of Registered Voter  
Alfred Vega  
Printed Name of Registered Voter  
561 Liberty St Allentown Pa,  
Address  
Alfred Vega

Dorothy Heist  
Signature of Registered Voter  
DOROTHY HEIST  
Printed Name of Registered Voter  
2071 LAWRENCE AVE  
Address  
ALLENTOWN PA 18104

Jose Gatti  
Signature of Registered Voter  
Jose Gatti  
Printed Name of Registered Voter  
Pg 136x 907  
Address  
Allentown PA 18102

Joseph Boushalk  
Signature of Registered Voter  
JOSEPH BOUSHALK  
Printed Name of Registered Voter  
1125 JORDAN BLVD  
Address  
WHITEHALL Pa 18052

Mark J. Cerciello  
Signature of Registered Voter  
Mark J. Cerciello  
Printed Name of Registered Voter  
451 Chew St.  
Address  
Allentown, Pa. 18102

Re: Examination/Reexamination of Electronic Voting System (Page 2 of 2)

Elizabeth Gladfelter  
Signature of Registered Voter  
ELIZABETH GLADFELTER  
Printed Name of Registered Voter  
4234 Dorney Park Rd.  
Address  
Allenstown, Pa. 18104  
Address

Ramon Rodriguez  
Signature of Registered Voter  
Ramon L. Rodriguez  
Printed Name of Registered Voter  
24 N 11 St  
Address  
Allenstown PA  
Address

John L Hardy Jr.  
Signature of Registered Voter  
John L Hardy Jr  
Printed Name of Registered Voter  
919 Hamilton St  
Address  
Allenstown, PA 18101  
Address

Barbara L. Calvert  
Signature of Registered Voter  
BARBARA L CALVERT  
Printed Name of Registered Voter  
756 N 10TH ST  
Address  
ALLENSTOWN PA 18102  
Address

Jeanette Williams  
Signature of Registered Voter  
JEANNETTE Williams  
Printed Name of Registered Voter  
117 South 4th Street  
Address  
Allenstown, Pa. 18102  
Address



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
302 North Office Building  
Harrisburg, PA 17120

PEDRO A. CORTÉS  
Secretary of the Commonwealth

Telephone: (717) 767-8787  
Fax: (717) 767-1734  
Website: www.dos.state.pa.us

April 18, 2006

Cathy L. Reed  
619 Greenleaf Street  
Allentown, PA 18102-1658

RE: Request for Voting System Re-examination

Dear Ms. Reed:

The Department of State has reviewed your letter of March 25, 2006, requesting the re-examination the Diebold AV-OS voting system. As you know, that system was examined in Harrisburg on November 22, 2005 and properly certified on January 17, 2006.

Your request seeking re-examination is insufficient to require a re-examination of the Diebold AV-OS voting system. Therefore, I must decline to conduct the examination requested and return herewith the \$450 check that accompanied your request.

Certification of electronic voting systems in Pennsylvania must meet two testing requirements. Section 1105-A(a) of the Election Code, 25 P.S. § 3031.5(a), requires testing by a federally recognized independent testing authority (ITA). Section 1107-A of the Election Code, 25 P.S. § 3031.7, lists seventeen separate points that must be examined by Pennsylvania before certification may occur. As stated in the certification report issued on January 7, 2006, the Diebold system fully met both the federal and state requirements. Since that date, no credible information has been provided to the Department or come to our attention that any change or modification has been made to this system.

The Department takes requests for re-examination very seriously and acted favorably on two such requests last year. However, if no new facts are brought to light concerning potential irregularities or deficiencies in a system, there is no reasonable basis to subject a system to a re-examination, pursuant to 25 P.S. § 3031.5(d). In the case of the Diebold system, there is no genuine prospect that a re-examination would reveal anything that was not revealed in the examination conducted on November 22, 2005 and subsequent information received by the Department prior to the certification of the system on January 17, 2006.

Cathy L. Reed  
RE: Diebold AV-OS Re-examination Request  
April 18, 2006  
Page 2

With regard to the specific concerns in your letter, please permit me to direct you to the January 17, 2006 Certification Report of the Diebold AV-OS voting system, which can be found on the Department's website under the Bureau of Commissions, Elections and Legislation.

For these reasons, I decline to conduct the requested re-examination.

Sincerely yours,



Pedro A. Cortés

PAC/AHM/mab

Enclosure

Exhibit E

To: Honorable Pedro A. Cortés  
Secretary of State  
Commonwealth of Pennsylvania  
Bureau of Commissions, Elections, and Legislation  
210 North Office Building  
Harrisburg PA 17120

Re: Examination/Reexamination of Electronic Voting System in  
[Name of County] County Pennsylvania pursuant to  
25 P.S. Sec. 3031.5 (a) and (b)

Dear Sir:

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed ten (10) in number.
3. We respectfully request that the Secretary of State for the Commonwealth of Pennsylvania examine/reexamine the electronic voting system used in [Name of County] County Pennsylvania pursuant to 25 P.S. Sec 3031 (a) of the Pennsylvania Election Code.

3a. In denying certification to the Diebold AV-OS voting system, the Pennsylvania Secretary of State relied upon investigator, Harri Hursti's, successful demonstration in Florida of a results-altering, undetectable "hack" via a security vulnerability in the memory cards used in Diebold voting systems. At the end of his report on the Florida investigation, Harri Hursti stated:

"The architecture of other manufacturers should be examined for similar vulnerabilities."

The full report on Hursti's study is available at <http://www.blackboxvoting.org/BBVreport.pdf>.

The only reasonable reading of Mr. Hursti's recommendation is as a call for a broad examination of the overall hardware, firmware and software architecture of each voting system for vulnerabilities to tampering, rather than as a narrow recommendation for examination of memory cards. Another voting system may not place as many major functions in the memory card or employ interpreted code there, but may nonetheless have major vulnerabilities in other parts of its architecture. Anything less than a full review of the overall architecture by an independent expert assigned the task of trying to falsify results by exploiting any vulnerable points discovered could very well fail to identify such vulnerabilities. The model for such a thorough examination is the 2004 RABA Technologies, LLC "red team attack" on the Diebold AV-TS touchscreen voting system that was commissioned by the Maryland Department of Legislative Services. The report on that examination is available at [www.raba.com/press/TA\\_Report\\_AccuVote.pdf](http://www.raba.com/press/TA_Report_AccuVote.pdf).

We hereby request that the re-examination of the Danaher model voting machine include examination by qualified independent computer security experts of, and attempts to exploit vulnerabilities in, the entire system's architecture. The re-examination should be modeled upon, and be at least as comprehensive and rigorous as, the Harri Hursti and RABA Technologies examination.

4. We have enclosed a check payable to the Treasurer of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).
5. We respectfully request that pursuant to 25 P.S. Sec. 3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.

#### VERIFICATION

We, the undersigned, state that the facts set forth in this document are true and correct to the best of our knowledge, information, and belief. We acknowledge that this verification is made subject to the penalties of 18 Pa. C.S. Sec. 4909, relating to unsworn falsification to authorities.

Dated:      March 24, 2006

Re: Examination/Reexamination of Electronic Voting System (Page 1 of 2)



Re: Examination/Reexamination of Electronic Voting System (Page 2 of 2)

Bert Johnson  
Signature of Registered Voter  
Bert Johnson  
Printed Name of Registered Voter  
Arden 3  
Address  
New Hope PA 18938

Caroleen Castle  
Signature of Registered Voter  
Caroleen Castle  
Printed Name of Registered Voter  
3248 Bristol Rd.  
Address  
Chalfont PA 18914

Megyn Munson  
Signature of Registered Voter  
GREGORY MUNSON  
Printed Name of Registered Voter  
795A N. LINAKIN PIKE  
Address  
Chalfont, PA 18914

John Mihalich  
Signature of Registered Voter  
John Mihalich  
Printed Name of Registered Voter  
215 E Farwood Drive  
Address  
Chalfont, PA 18914

Michael J. Doyle  
Signature of Registered Voter  
MICHAEL J DOYLE  
Printed Name of Registered Voter  
1463 RIVER RD, PIRKASIE  
Address  
6127 BACK BRIDY  
PA 18944

Maria B. Gardner  
Signature of Registered Voter  
Maria B. Gardner  
Printed Name of Registered Voter  
701 Shadgarden Dr  
Address  
Pirkasie, PA 18944

Elizabeth Ann Allen  
Signature of Registered Voter  
Elizabeth Ann Allen  
Printed Name of Registered Voter  
23 Fox Hill Rd  
Address  
Doylestown PA  
19041

Thomas C. Cullen  
Signature of Registered Voter  
Thomas Cullen  
Printed Name of Registered Voter  
807 New Drive  
Address  
Sellersville PA 18960

Ruth Matheny  
Signature of Registered Voter  
RUTH MATHENY  
Printed Name of Registered Voter  
10 PEACH DRIVE  
Address  
Doylestown PA 19041

\_\_\_\_\_  
Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

Re: Examination/Reexamination of Electronic Voting System (Page 2 of 2)

Madelaine A. Ranley  
Signature of Registered Voter  
MADÉLINE A. RANLEY  
Printed Name of Registered Voter  
361 BIRDSONG WAY  
Address  
DOYLESTOWN, PA 18901

Alexander Sichert  
Signature of Registered Voter  
Alexander Sichert  
Printed Name of Registered Voter  
10 Pearl Drive  
Address  
Doylestown Pa 18901

C. Fewless  
Signature of Registered Voter  
C. FEWLESS  
Printed Name of Registered Voter  
2543 Brownsvl. Rd.  
Address  
Lanahorne, Pa. 19053

\_\_\_\_\_  
Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

Marta Steele  
Signature of Registered Voter  
Marta Steele  
Printed Name of Registered Voter  
147 S. Delaware Ave.  
Address #5  
Yardley, PA 19067

\_\_\_\_\_  
Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Registered Voter  
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Printed Name of Registered Voter  
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Signature of Registered Voter  
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Printed Name of Registered Voter  
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Signature of Registered Voter  
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Printed Name of Registered Voter  
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Address

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Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

Re: Examination/Reexamination of Electronic Voting System (Page 2 of 2)

Sean Heck  
 Signature of Registered Voter  
SEAN HECK  
 Printed Name of Registered Voter  
98 Colonial Heritage  
 Address  
DOYLESTOWN

Robin Steilly  
 Signature of Registered Voter  
Robin Steilly  
 Printed Name of Registered Voter  
7 Pennsbury Ct  
 Address  
Lower Makefield 19067

Joseph A. Stronig  
 Signature of Registered Voter  
JOSEPH A. STRONIG  
 Printed Name of Registered Voter  
3849 Hunter Rd  
 Address  
Kinnersville PA 18930

Melissa S. Falter  
 Signature of Registered Voter  
MELISSA S. FALTER  
 Printed Name of Registered Voter  
37 ASPEN WAY  
 Address  
DOYLESTOWN, PA  
18901

Elizabeth Murrell Lamm  
 Signature of Registered Voter  
5217 ARKITE MURRELL LAMM  
 Printed Name of Registered Voter  
5th Valley Green  
 Address  
DOYLESTOWN 18901

Jean K.B. Graham  
 Signature of Registered Voter  
JEAN K.B. GRAHAM  
 Printed Name of Registered Voter  
5016 GAYMAN RD  
 Address  
DOYLESTOWN, PA 18901

Sanyia E. Gehiff  
 Signature of Registered Voter  
SANYIA E. GEHIFF  
 Printed Name of Registered Voter  
856 FERRY RD  
 Address  
DOYLESTOWN, PA 18901

LET MANN  
 Signature of Registered Voter  
LET MANN  
 Printed Name of Registered Voter  
432 Belmont Ave  
 Address  
DOYLESTOWN, PA 18901

Gary Schief  
 Signature of Registered Voter  
GARY SCHIEF  
 Printed Name of Registered Voter  
850 FERRY RD  
 Address  
DOYLESTOWN, PA 18901

Mary K. Sprass  
 Signature of Registered Voter  
MARY K. SPRASS  
 Printed Name of Registered Voter  
1243 MARK DR  
 Address  
LANSDALE, PA 19446



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
302 North Office Building  
Harrisburg, PA 17120

PEDRO A. CORTES  
Secretary of the Commonwealth

Telephone: (717) 787-5747  
Fax: (717) 787-3994  
Website: www.pennstate.gov

April 7, 2006

Ruth E. Matheny  
10 Pearl Drive  
Doylestown, PA 18901

RE: Request for Voting System Re-examination

Dear Ms. Matheny:

The Department of State has reviewed your letter of March 24, 2006, requesting the re-examination the Danaher ELECTronic voting system. As you know, that system was examined in Harrisburg on June 8, 2005 with a subsequent demonstration on November 2, 2005 and properly certified on November 15, 2005.

Your request seeking re-examination is insufficient to require a re-examination of the Danaher ELECTronic voting system. Therefore, I must decline to conduct the examination requested and return herewith the \$450 check that accompanied your request.

Certification of electronic voting systems in Pennsylvania must meet two testing requirements. Section 1103-A(a) of the Election Code, 25 P.S. § 3031.5(a), requires testing by a federally recognized independent testing authority (ITA). Section 1107-A of the Election Code, 25 P.S. § 3031.7, lists seventeen separate points that must be examined by Pennsylvania before certification may occur. As stated in the certification report issued on November 15, 2005, the Danaher system fully met both the federal and state requirements. Since that date, no credible information has been provided to the Department or come to our attention that any change or modification has been made to this system.

The Department takes requests for re-examination very seriously and acted favorably on two such requests last year. However, if no new facts are brought to light concerning potential irregularities or deficiencies in a system, there is no reasonable basis to subject a system to a re-examination, pursuant to 25 P.S. § 3031.5(d). In the case of the Danaher system, there is no genuine prospect that a re-examination would reveal anything that was not revealed in the examination conducted on June 8, 2005.

Ruth E. Matheny  
R.E. Danaher Re-examination Request  
April 7, 2006  
Page 2

With regard to the specific concerns in your letter, let me direct you to the November 15, 2005 Certification Report of the Danaher ELECTronic voting system, which can be found on the Department's website under the Bureau of Commissions, Elections and Legislation.

For these reasons, I decline to conduct the request re-examination.

Sincerely yours,



Padm A. Corids

PAC/AHM/mmb

Enclosure

Chester County/Coalition for Voting Integrity  
c/o Marian K. Schneider  
Attorney-at-Law  
10 Main Avenue, First Floor  
Berwyn, PA. 19312

January 20, 2006

*Via Certified Mail,  
Return Receipt Requested*

Honorable Pedro A. Cortes, Secretary of the Commonwealth  
Department of State  
Bureau of Commissions, Elections and Legislation  
210 North Office Building  
Harrisburg, PA. 17120

Re: Re-examination of the ES&S iVotronic

Secretary Cortes:

Pursuant to 25 PS. § 3031.5, on behalf of the undersigned electors of the Commonwealth of Pennsylvania, we hereby request a re-examination of the ES&S iVotronic voting machine system. We enclose at least ten (10) certifications of duly registered electors in the Commonwealth of Pennsylvania who seek this re-examination. We have enclosed a check for \$450 payable to the Treasurer of the Commonwealth of Pennsylvania.

We seek re-examination of the iVotronic system on two grounds: First, several jurisdictions that have used the system and some voting integrity organizations have identified serious questions about the accuracy, reliability, security and integrity of the iVotronic voting system. Second, a review of the testing procedures used by the Department of State reveals that some voting systems were subjected to more rigorous standards including security tests for hacking. Such tests must be conducted upon every electronic voting system certified in Pennsylvania. We believe that if the Department performed a "hacking" test on the iVotronic, the iVotronic would fail.

#### **History of Problems with the iVotronic system**

Votersunite.org is a national non-partisan organization dedicated to fair and accurate elections. It focuses on distributing well-researched information to elections officials, elected officials, the media, and the public. As part of its mission, Votersunite has compiled reports of system failures of many electronic voting systems on the market today. We enclose a 39-page document that lists the instances of iVotronic failures in other jurisdictions which would call into question the ability of the iVotronic to perform as required in Pennsylvania elections.

In addition to system failures, the Votersunite document references a newspaper article indicating that a top executive at ES&S, Tom Eschberger, was given immunity from prosecution in 2002 in return for his testimony against then Arkansas Secretary of State, Bill McCuen. Mr. McCuen was charged with taking bribes and kickbacks, and eventually pled guilty to those

charges. If this is true, then ES&S has demonstrated a lack of integrity which should disqualify it from any contract in Pennsylvania.

Along the same lines, Dr. Harri Hursti, a computer expert, was employed by Leon County, Florida, to test the security of the Diebold AccuVote OS system. When serious flaws were found, Leon County then entered into negotiations with ES&S to supply the county's voting machines. Interestingly, ES&S withdrew from those negotiations at the eleventh hour. It is not clear whether Leon County planned to subject the iVotronic to security testing before ES&S withdrew. Pennsylvania must do business with companies whose systems can withstand the most rigorous testing.

Under Pennsylvania law, the machine report must reflect an accurate count of the votes. 25 P.S. § 3031.7. Ellen Brodsky from Broward County, Florida has provided a poll tape (a copy of which is enclosed) from the ES&S iVotronic in the August, 2004 primary election in Plantation, Florida. The beginning of the tape shows "Public count " as zero, but the bottom of the tape shows more than 2 million votes! This is strong indication of problems in the software. Should the same situation occur in Pennsylvania at the opening of the polls, this machine would be unusable. Machine errors like this could result in long lines at the polls and discourage citizens from voting.

The original patent documents for the iVotronic's predecessor, the nearly identical Votronic, are enlightening. Patent No. 05583329, figure #3, shows each component of the Personal Electronic Ballot ("PEB") uniquely numbered. These components include a memory, battery, signal isolator and a processor. "Processor 31 [the PEB contained processor] updates display 25 [the voting machine display screen] accordingly as the voter makes selections. When the selections are finalized and the ballot is cast, the processor updates a running tally of ballots cast stored in memory 22 [the PEB contained memory] in random fashion assuring voter confidentiality." Processor 31 and memory 22 are in the PEB. Processor 31 executes software that provides an integral function of the voting process. Whether the iVotronic uses a processor or dedicated logic circuitry, it may contain executable code that runs on the PEB. Alternately, depending on the system design, the software code could be transmitted to, and executed on the voting machine processor and the supervisor machine processor. Security assessments are needed to examine the protocols used to communicate with the PEB and iVotronic. A re-evaluation of the iVotronic should, at a minimum, determine what executable code exists in, or executes on the PEB, whether that code was tested and certified by the testing ITA, SysTest, and whether it is properly controlled by applicable software development standards.

#### **Lack of Uniformity in Testing Standards.**

The Diebold AccuVote OS voting system was recently denied certification in the Commonwealth on the basis of a security report by Dr. Harri Hursti. Neither the iVotronic, nor any other system certified to date has been subjected to such external "red team" testing. The citizens of Pennsylvania deserve to have their voting machines subjected to the most rigorous challenges available. Therefore, all voting systems in Pennsylvania should be subject to such

Hon. Pedro Cortes  
January 20, 2006  
Page 3 of 3

testing, particularly the iVotronic. Other states have subjected their systems to such challenge; we should do no less for Pennsylvania citizens.

HAVA may provide minimum standards for voting machine technology, but according to section 304 of that act, states are free to strengthen those standards, and Pennsylvania should do so. Dr. Shamos, Pennsylvania's consulting expert on electronic voting systems, at the recent Voting Systems Testing Summit, expressed serious reservations about the adequacy of the testing performed in Pennsylvania for voting machine certification. If Pennsylvanians are to have any confidence in future election outcomes, the certification testing must be much more rigorous, and must include "red team" testing.

Similar standards of testing and performance should be employed for all vendors in the Commonwealth. Because Dr. Hursti's report was an integral part of the Diebold AccuVote OS decertification, it is appropriate to subject the ES&S iVotronic to a similar challenge by Dr. Hursti. We therefore suggest that Dr. Hursti and Dr. David Dill be engaged to re-examine the iVotronic because they are experts in computer security and hacking.

Pursuant to 25 Pa. § 3031.7, voting systems in Pennsylvania must "preclude every person from tampering with the tabulating element." It is impossible to comply with this requirement if the source code and applications for the voting system are not made public and available for inspection by state officials and outside computer experts. Failure or refusal to reveal source codes or software which could be altered or manipulated to affect the election outcome is unacceptable and should result in summary decertification.

We request that this re-examination be conducted expeditiously because several counties in the Commonwealth have chosen or are considering the iVotronic. Time is of the essence, and so is our democracy.

Should you have any questions or require anything further, you may contact Marian Schneider at 610-644-1925 or Jana Nestlerode at 610-436-2647.

Respectfully submitted,

Prof. Jana Nestlerode

Marian K. Schneider, Esq.

Chester County/Coalition for Voting Integrity



**CERTIFICATION IN SUPPORT OF REQUEST FOR  
RE-EVALUATION OF THE ES&S iVOTRONIC VOTING SYSTEM**

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed the number ten (10).
3. Pursuant to 25 P.S. § 3031 (a) of the Pennsylvania Election Code, we respectfully request the Secretary of State for the Commonwealth of Pennsylvania to examine/reexamine the electronic voting system manufactured by ES&S, and called the iVotronic system.
4. We have enclosed a check payable to the Treasurer of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).
5. We respectfully request that pursuant to 25 P.S. § 3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.
7. We aver that the facts set forth in this certification are true and correct to the best of our knowledge, information and belief. We understand that this verification is made subject to the penalties of 18 P.S. § 4909 relating to unsworn falsification to authorities.
8. The signatures of the electors may be executed in counterpart originals.

Scott K. Johnson  
1. Signature of Registered Voter

Scott K. Johnson  
Printed Name of Registered Voter

523 Midland Avenue

Berwyn, PA 19312  
Address

Linda E Leighbody  
3. Signature of Registered Voter

Linda E Leighbody  
Printed Name of Registered Voter

496 School House Lane

Devon, PA 19333  
Address

Vanessa Johnson  
2. Signature of Registered Voter

Vanessa Johnson  
Printed Name of Registered Voter

523 MIDLAND AVENUE

BERWYN, PA 19312  
Address

Thomas E. Sennett  
4. Signature of Registered Voter

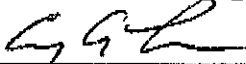
Thomas E. Sennett  
Printed Name of Registered Voter

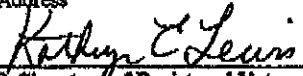
219 Swinburn Rd

West Chester, PA 19382  
Address

**CERTIFICATION IN SUPPORT OF REQUEST FOR  
RE-EVALUATION OF THE ES&S iVOTRONIC VOTING SYSTEM**

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed the number ten (10).
3. Pursuant to 25 P.S. Sec 3031 (a) of the Pennsylvania Election Code, we respectfully request the Secretary of State for the Commonwealth of Pennsylvania to examine/reexamine the electronic voting system manufactured by E S & S, and called the iVOTronic system.
4. We have enclosed a check payable to the Treasurer of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).
5. We respectfully request that pursuant to 25 P.S. Sec.3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.
7. We aver that the facts set forth in this certification are true and correct to the best of our knowledge, information and belief. We understand that this verification is made subject to the penalties of 18 P.S. Section 4909 relating to unsworn falsification to authorities.
8. The signatures of the electors may be executed in counterpart originals.

  
\_\_\_\_\_  
1. Signature of Registered Voter  
CRAIG A. LEWIS  
\_\_\_\_\_  
Printed Name of Registered Voter  
469 GREEN HILL LA  
\_\_\_\_\_  
BERWYN, PA 19312  
\_\_\_\_\_  
Address

  
\_\_\_\_\_  
3. Signature of Registered Voter  
KATHRYN E LEWIS  
\_\_\_\_\_  
Printed Name of Registered Voter  
469 GREEN HILL LA  
\_\_\_\_\_  
BERWYN PA 19312  
\_\_\_\_\_  
Address

\_\_\_\_\_  
2. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
\_\_\_\_\_  
Address

\_\_\_\_\_  
4. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
\_\_\_\_\_  
Address

*Signatures continued on following page*

**CERTIFICATION IN SUPPORT OF REQUEST FOR  
RE-EVALUATION OF THE ES&S IVOTRONIC VOTING SYSTEM**

Formatted: Font color: Dark Red

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed the number ten (10).
3. Pursuant to 25 P.S. § 3031 (a) of the Pennsylvania Election Code, we respectfully request the Secretary of State for the Commonwealth of Pennsylvania to examine/reexamine the electronic voting system manufactured by ES&S, and called the iVotronic system.
4. We have enclosed a check payable to the Treasurer of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).
5. We respectfully request that pursuant to 25 P.S. § 3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.
7. We aver that the facts set forth in this certification are true and correct to the best of our knowledge, information and belief. We understand that this verification is made subject to the penalties of 18 P.S. § 4909 relating to unsworn falsification to authorities.
8. The signatures of the electors may be executed in counterpart originals.

Margaret van Naerssen  
1. Signature of Registered Voter

MARGARET VAN NAERSSSEN  
Printed Name of Registered Voter

460 Prussian Lane  
Wayne, PA 190877  
Address

Rochelle S Rabin  
3. Signature of Registered Voter

Rochelle S. Rabin  
Printed Name of Registered Voter

99 Old Forge Crossing  
Medaryn Township  
Devon, PA 19333  
Address

Patricia DiFeliciano  
PATRICIA DiFELICIANO

521 Red Fox Lane  
STAFFORD, PA 19087

*Signatures continued on following page*

A. Van Naerssen  
2. Signature of Registered Voter

A. VAN NAERSSSEN  
Printed Name of Registered Voter

460 Prussian Lane  
Wayne, PA 19087 (TWOY PRINTING)  
Address

Virginia Whittington  
4. Signature of Registered Voter

VIRGINIA WHITTINGTON  
Printed Name of Registered Voter

Billie Stevens  
PAOLI WOODS  
PAOLI, PA 19301  
Address

Billie Stevens  
Billie Stevens

85 Bunkerhill Court  
Wayne, PA 19087

**CERTIFICATION IN SUPPORT OF REQUEST FOR  
RE-EVALUATION OF THE ES&S iVOTRONIC VOTING SYSTEM**

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed the number ten (10).
3. Pursuant to 25 P.S. § 3031 (a) of the Pennsylvania Election Code, we respectfully request the Secretary of State for the Commonwealth of Pennsylvania to examine/reexamine the electronic voting system manufactured by ES&S, and called the iVotronic system.
4. We have enclosed a check payable to the Treasurer of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).
5. We respectfully request that pursuant to 25 P.S. § 3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.
7. We aver that the facts set forth in this certification are true and correct to the best of our knowledge, information and belief. We understand that this verification is made subject to the penalties of 18 P.S. § 4909 relating to unsworn falsification to authorities.
8. The signatures of the electors may be executed in counterpart originals.

*Joan M. Welch*  
1. Signature of Registered Voter  
Joan M. Welch  
Printed Name of Registered Voter  
214 S. Walnut St  
West Chester PA 19382  
Address  
*R. Lorraine Bernot sky*  
3. Signature of Registered Voter  
R. Lorraine Bernot sky  
Printed Name of Registered Voter  
368 vineyard lane  
Exton, PA 19341  
Address

*Jeanne Peters*  
2. Signature of Registered Voter  
JEANNE PETERS  
Printed Name of Registered Voter  
310 W. Darlington St  
WC 19380  
Address  
*Peter Loedel*  
4. Signature of Registered Voter  
1530 Montana Dr.  
Printed Name of Registered Voter  
Downingtown, PA 19335  
PETER LOEDEL  
Address

*Signatures continued on following page*

**CERTIFICATION IN SUPPORT OF REQUEST FOR  
RE-EVALUATION OF THE ES&S IVOTRONIC VOTING SYSTEM**

1. We, the undersigned, are qualified registered electors of the Commonwealth of Pennsylvania.
2. We, the undersigned, are qualified, registered electors who exceed the number ten (10).
3. Pursuant to 25 P.S. § 3031 (a) of the Pennsylvania Election Code, we respectfully request the Secretary of State for the Commonwealth of Pennsylvania to examine/reexamine the electronic voting system manufactured by ES&S, and called the iVotronic system
4. We have enclosed a check payable to the Treasurer of the Commonwealth of Pennsylvania in the amount of four hundred and fifty dollars (\$450.00).
5. We respectfully request that pursuant to 25 P.S. § 3031.5 (b) the Secretary of State examine the electronic voting system and issue a report relating to the functionality of the system.
6. We respectfully request that the Secretary follow all the applicable requirements of the Pennsylvania election Code and common law.
7. We aver that the facts set forth in this certification are true and correct to the best of our knowledge, information and belief. We understand that this verification is made subject to the penalties of 18 P.S. § 4909 relating to unsworn falsification to authorities.
8. The signatures of the electors may be executed in counterpart originals.

ing Bonnington  
1. Signature of Registered Voter  
Lucy Bonnington  
Printed Name of Registered Voter  
7 Mt. Misery Lane  
Malvern PA 19355  
Address

\_\_\_\_\_  
3. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
\_\_\_\_\_  
Address

\_\_\_\_\_  
2. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
\_\_\_\_\_  
Address

\_\_\_\_\_  
4. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
\_\_\_\_\_  
Address

**CERTIFICATION IN SUPPORT OF REQUEST FOR  
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8. The signatures of the electors may be executed in counterpart originals.

Jana Nestlerode  
1. Signature of Registered Voter

JANA NESTLERODE  
Printed Name of Registered Voter

PO BOX 2292  
West Chester, Pa. 19380  
Address

Shirley B. Smith  
3. Signature of Registered Voter

SHIRLEY B. SMITH  
Printed Name of Registered Voter

1032 GLEN HALL RD.  
KENNETT SQUARE, PA 19348  
Address

Ronald H. T. McVey  
2. Signature of Registered Voter

RONOLD H. T. McVEY  
Printed Name of Registered Voter

491 Toms Rd.  
HAAMS BURG, Pa. 17112  
Address



Casey M. Lewis  
4. Signature of Registered Voter


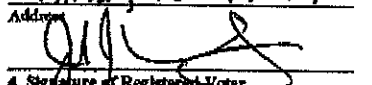
CASEY M. LEWIS  
Printed Name of Registered Voter

153 Carey Dr. Apt. 8  
West Chester, PA 19382  
Address

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RE-EVALUATION OF THE ES&S IVOTRONIC VOTING SYSTEM**

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8. The signatures of the electors may be executed in counterpart originals.

  
1. Signature of Registered Voter  
JEANNE GAVIELLO  
Printed Name of Registered Voter  
51 University Ave  
Address  
West Chester, PA 19385  
  
3. Signature of Registered Voter  
Thomas E. Smith  
Printed Name of Registered Voter  
236 Dickinson Ave  
Address  
Sharhmore, PA 19081

  
2. Signature of Registered Voter  
DIAN WILLIAMS  
Printed Name of Registered Voter  
217 W. Harvey St  
Address  
Phila., PA 19144  
  
4. Signature of Registered Voter  
John J. Kennedy  
Printed Name of Registered Voter  
614 Oak St  
Address  
Keyerston, PA 19468

*Signatures continued on following page*

Anne R Crowley  
5. Signature of Registered Voter  
Anne R Crowley  
Printed Name of Registered Voter  
635 Llewellyn Rd  
Berwyn PA 19312  
Address

Marilyn J. Furfari  
7. Signature of Registered Voter  
Marilyn J. Furfari  
Printed Name of Registered Voter  
712 1st Avenue  
Berwyn, PA 19312  
Address

9. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address  
\_\_\_\_\_

Joan S. Bergquist  
6. Signature of Registered Voter  
Joan S. Bergquist  
Printed Name of Registered Voter  
217 Devon Boulevard  
Devon, PA 19333  
Address

8. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address  
\_\_\_\_\_

10. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address  
\_\_\_\_\_



*George Cotzarelis*  
5. Signature of Registered Voter  
George Cotzarelis  
Printed Name of Registered Voter  
1041 Perwydd Lane  
Berwyn, PA 19312  
Address

\_\_\_\_\_  
7. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

\_\_\_\_\_  
9. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

*Marian K. Schneider*  
6. Signature of Registered Voter  
MARIAN K. SCHNEIDER  
Printed Name of Registered Voter  
1041 PERWYDD LANE  
BERWYN, PA 19312  
Address

\_\_\_\_\_  
8. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

\_\_\_\_\_  
10. Signature of Registered Voter  
\_\_\_\_\_  
Printed Name of Registered Voter  
\_\_\_\_\_  
Address

Mary Brewster  
5. Signature of Registered Voter

Mary Brewster  
Printed Name of Registered Voter

303 HJ-tech Rd.  
West Chester, PA 19382  
Address

Geneva Covington  
7. Signature of Registered Voter

Geneva Covington  
Printed Name of Registered Voter

406 Spackman Lane  
Exton PA 19341  
Address

James C. Metzger  
9. Signature of Registered Voter

JAMES C. METZGER  
Printed Name of Registered Voter

476 Scott Dr  
WEST CHESTER, PA 19380  
Address

Christopher M. Fiorentino  
6. Signature of Registered Voter

Christopher M. Fiorentino  
Printed Name of Registered Voter

1335 Stonegate Drive  
Downingtown, PA 19335  
Address

Barbara Kauffman  
8. Signature of Registered Voter

Barbara Kauffman  
Printed Name of Registered Voter

131 YEW RD.  
CITIZENSHIP PA 19012  
Address

Mary Kivlin  
10. Signature of Registered Voter

Mary Kivlin  
Printed Name of Registered Voter

476 Scott Dr  
West Chester, Pa 19380  
Address

*Loni Frank*

5. Signature of Registered Voter

*Loni Frank*

Printed Name of Registered Voter

*626 Olympia Hills Cir*

*Berwyn PA 19312*

Address

7. Signature of Registered Voter

Printed Name of Registered Voter

Address

9. Signature of Registered Voter

Printed Name of Registered Voter

Address

*A. David Frank*

6. Signature of Registered Voter

*A. David Frank*

Printed Name of Registered Voter

*626 Olympia Hills Circle*

*Berwyn, PA 19312*

Address

8. Signature of Registered Voter

Printed Name of Registered Voter

Address

10. Signature of Registered Voter

Printed Name of Registered Voter

Address



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
Harrisburg, Pennsylvania  
17120

DEPUTY SECRETARY OF THE COMMONWEALTH

Telephone  
(717) 787-6458

February 3, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Marian K. Schneider, Esq.  
10 Main Avenue, First Floor  
Berwyn, PA 19312

Re: Request for Voting System Re-examination

Dear Ms. Schneider:

The Department of State has reviewed your letter of January 20, 2006, requesting the Secretary of the Commonwealth re-examine the ES&S iVotronic voting system that was examined in Harrisburg on November 16-17, 2005 and properly certified on December 22, 2005.

Your request seeks re-examination on two grounds, neither of which is sufficient to require re-examination. Therefore, the Secretary declines to conduct the re-examination requested and returns herewith the \$450 check that accompanied your clients' request.

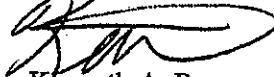
Certification of electronic voting systems in Pennsylvania must meet two testing requirements. Section 1105-A(a) of the Election Code, 25 P.S. § 3031.5(a), requires testing by a federally recognized independent testing authority (ITA). Section 1107-A of the Election Code, 25 P.S. § 3031.7, lists seventeen separate points that must be examined in Pennsylvania before certification may occur. As stated in the Secretary's certification on December 22, 2005, the iVotronic fully met both the federal and state requirements. Since that date, this system has not been used in any Pennsylvania election, and no credible information has been provided to the Secretary or come to his attention that any change or modification has been made to this system.

The Department takes requests for re-examination very seriously. However, if no new facts are brought to light concerning potential irregularities or deficiencies in a system, there is no reasonable basis to subject a system to a re-examination. In the case of the iVotronic system, there is no genuine prospect that a re-examination would reveal anything that was not revealed in the examination held on November 16-17, 2005.

Marian K. Schneider, Esq.  
February 3, 2006  
Page 2

For these reasons, the Secretary declines to conduct the requested re-examination.

Very truly yours,



Kenneth A. Rapp  
Deputy Secretary for Regulatory Programs

KAR:bjd  
Enclosure

