

**TESTIMONY TO THE COLORADO ELECTIONS REFORM COMMISSION
December 16, 2008**

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Good afternoon, my name is Russ Ragsdale. I am the City and County Clerk from Broomfield. I have been involved in the administration of elections for over 25 years. Today I want to address my comments specifically towards voting system certification.

I currently have the privilege of representing Colorado's local elections officials on the U.S. Elections Assistance Commission's (EAC) Standards Board. I have also recently been nominated to serve as the Standards Board's representative to the Technical Guidelines Development Committee (TGDC).

The Standards Board was established by the Help America Vote Act (HAVA) in order to provide feedback from elections officials to the EAC during the development of guidelines for voting systems. It consists of a local and state elections official from every U.S. state and territory. The TGDC was established by HAVA to work with the National Institute of Standards and Technology (NIST) to draft those guidelines. It consists of 15 members with backgrounds ranging from technical to elections administration to elections advocacy. This committee is chaired by the Director of NIST.

Being appointed to committees does not bestow on one any mystical powers such as the ability to see into the future. However, based on my work with the Standards Board, I would like to offer the Commission my perspective on activities regarding voting systems certification at the federal level and what challenges Colorado counties face today in regards to procuring voting systems.

Activities at the EAC

Among many other things, HAVA requires the EAC to

- o develop a set of voluntary voting system standards;
- o accredit testing laboratories, and;
- o develop a process for certifying voting systems at the federal level.

Prior to the EAC's existence, the Federal Election Commission, utilizing the National Association of State Election Directors (NASED) as the qualifying body, adopted the 1990 Voting System Standards (VSS) and subsequently, the 2002 VSS.

HAVA required the EAC to revise the 2002 standards while assuming responsibility for the certification process. The deadline set by HAVA for adopting the revised standards did not anticipate delays in appointing the original EAC commissioners thus compelling the EAC to adopt the 2005 Voluntary Voting System Guidelines in a hurried manner. Adoption of the 2005 VVSG was on December 13, 2005 with an effective date of December 13, 2007. By necessity, much of the 2005 VVSG is a carry over from the 2002 standards. The 2005 VVSG has been described as 90% 2002 VSS and 10% HAVA. Nonetheless, that 10% has proved problematic to voting system manufacturers.

Work is currently underway on the next iteration of the VVSG. This will be a complete rewrite of existing guidelines with the intent to provide direction for the next generation of voting systems. The initial draft of this VVSG was submitted to the EAC in August of 2007. Since then, the EAC has completed the first of 2 public review periods.

Comments from the public and the EAC's advisory boards are now being considered. A second draft of the guidelines will be forthcoming and a second round of comment gathering will take place before a final version is adopted. No date for adoption has been set.

The EAC performs its testing laboratories accreditation program by utilizing NIST's National Voluntary Laboratory Accreditation Program. Four testing laboratories have been accredited by the EAC. Three laboratories are currently accredited with the EAC recently suspending accreditation for the fourth.

Until December 13, 2007, voting system manufacturers could submit their systems to the EAC for testing against the 2002 VSS. After that date, the EAC will only test against the 2005 VVSG or subsequent versions of the VVSG. All 4 manufacturers currently with systems in use in Colorado submitted their systems prior to this date for 2002 VSS testing. Only 3 manufacturers have submitted systems for testing against the 2005 VVSG, none of those with a presence in Colorado.

As Commissioner Rosemary Rodriguez testified before you 2 weeks ago, the EAC has yet to certify any system to any set of standards using this new process. Because this is the first time the federal government has taken on the responsibility of testing and certifying voting systems, it is understandable that the EAC is going to take the time it deems necessary to do this right. But this has left many a local election official in a quandary.

What Colorado Election Officials Face

Colorado statute (CRS 1-5-601.5) requires that any voting system offered for sale in Colorado meet the 2002 VSS or standards that may thereafter be promulgated by the EAC.

While there are systems and system components available today that are NASED qualified to the 2002 VSS, these systems or components are several years old and likely do not reflect recent product improvements such as security and usability upgrades. While manufacturers have enhanced their systems, those newer versions have yet to clear testing and certification at the federal level, either to the 2002 or 2005 standards.

With the expiration of HB 1155, only the currently employed Premier voting system will maintain its "approved for use" status. Counties using other manufacturers' systems may be forced to replace their system before the 2010 election cycle if it fails retesting at the state level.

Colorado law (CRS 1-5-802) also requires the use of voter verified paper audit trails on DRE's by 2010. Some counties will need to replace or retrofit existing systems to meet this requirement.

Whether a county faces replacement because their current system fails retesting by the secretary of state or by the need to provide VVPAT or simply wishing to upgrade, they must be very cautious before making long-term investments of from tens of thousands to

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millions of county taxpayer dollars for their next voting system. Lack of progress at the federal level, decertification at the state level, and a truly uncertain business environment for voting system manufacturers combine to make the acquisition of compliant, supported systems an uncertain proposition.

Last year at this time, many counties were faced with the prospect of having to replace their decertified systems. There was much confusion and contradiction about viable options. It was hoped that the stopgap measure of HB 1155, while getting counties through the 2008 elections, would allow time for the fog to clear. Unfortunately today, the situation is no better and in many ways worse.

Final Thoughts

There are several paths the Commission may choose to recommend in regards to voting system certification. None appear to be a silver bullet.

Relying on the EAC for testing and certification may appear at this time to be conceding a vitally important function to a slow, plodding bureaucracy. However, the positive aspects of this approach include avoiding duplication of effort by different government agencies, avoiding the expense incurred by Colorado for testing and certification, and the EAC's ability to bring outstanding resources to bear, such as NIST.

Testing and certification at the state level also has its appeal. Local control, greater flexibility, and the ability to respond to specific state needs are desirable. If this path is recommended, caution must be exercised to avoid creating a "one-off" market in Colorado. If Colorado standards are contrary to, or completely unique from, federal standards, manufacturers may opt to do business elsewhere. It must be kept in mind that Colorado does not represent a large segment of the voting systems market.

While we all are working towards improved voting systems, legislating counties into a "must buy" situation now means having to invest in what is available today. Newer systems will likely deliver the functionality and accountability we want but they will take time to reach the market. My advice; go slow, stay flexible, and focus now on procedures such as pre-election testing, chain of custody security, and post-election audits rather than the systems themselves.

