



January 16, 2008

Sent via U.S. Mail and email ([secretary@sos.state.co.us](mailto:secretary@sos.state.co.us))  
(Original sent Certified Mail, Return Receipt Requested)  
Secretary of State Mike Coffman  
1700 Broadway, Suite 250  
Denver, Colorado 80290

**Re: Request for Reconsideration to Certify ES&S Voting Equipment  
pursuant to C.R.S. § 1-5-621(6)**

Dear Secretary Coffman:

Pursuant to C.R.S. §1-5-621(6), Jefferson County formally requests you reconsider your December 17, 2007 decision not to certify the ES&S voting system (the "Decision"). ES&S voting equipment has been used successfully without any significant problems since 2002 in Jefferson County. Jefferson County's use of this voting equipment and the extensive testing performed on these machines to prepare for each election provides strong empirical evidence that the ES&S equipment is secure and accurate and satisfies the objective certification requirements imposed by the Secretary of State's Office.

Specifically, Jefferson County seeks reconsideration of the Decision in connection with the ES&S Unity Software, the ES&S M650 Central Count Optical Scanner (the "ES&S Scanner"), and the ES&S Direct Recording Electronic voting machine (the "iVotronic"). Compelling evidence and new information, including re-testing performed by the Testing Board, warrant the reconsideration of the Decision. The following discussion provides detailed reasons to reconsider your Decision with respect to each of the following ES&S components:

**1. ES&S Unity Software**

The Testing Board's primary reason given for not certifying the ES&S Unity Software was the lack of a password protection system in the software. This issue is entirely attributable to the flawed methodology of the State certification process, rather than any functional problem with the ES&S Unity Software. If the State had implemented a testing system that included participation by individuals, who are trained to use and are familiar with the machines, documented issues such as the lack of password protection could have been avoided. The ES&S Unity Software has well documented password protection capabilities. Apparently, the machines

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provided to the Testing Board had the password protection system turned off, which led to the Testing Board's erroneous conclusion. The ES&S Unity Software has password protection capabilities, and anyone with the appropriate training could have turned on the password protection system and satisfied this standard. Thus, the Testing Board's choice not to certify the ES&S Unity Software was not based on any fault in the security of the software, but rather resulted from the lack of knowledge of those performing the tests. Accordingly, Jefferson County will present evidence at the rehearing to demonstrate the password protection capabilities of the ES&S Unity Software, which should satisfy the State certification standards.

## **2. The ES&S Scanner (M-650 Central Count Scanner)**

The primary reason given by the Testing Board for not certifying the ES&S scanner was the fact that it was unable to complete the testing. This is an important distinction from the issues raised relating to the ES&S Unity Software and the iVotronic. No specific functional or security problems were found with the ES&S Scanner. Rather, the problems all stem from the Testing Board's inability to complete its testing and tally results, which was also due, in part, to ballot programming errors caused by the vendor. Specifically, the Testing Board was unable to run 10,000 ballots through the scanner to simulate a general election and, accordingly, the ES&S Scanner failed all of the Testing Board's tests collectively on grounds that the Testing Board could not verify the results since it was unable to complete its testing.

Significant grounds exist for reversing this decision. First, ES&S has been informed by the Testing Board that the Testing Board has, subsequent to the Decision, completed the test by running 10,000 ballots through the ES&S Scanner. Accordingly, the Secretary may reverse the Decision on the basis that the Testing Board has now successfully conducted a retest, which demonstrates that the ES&S Scanner meets or exceeds the State certification standards. In addition, Jefferson County, which is the second largest county in Colorado in terms of population, routinely has run far in excess of 10,000 ballots through the ES&S Scanner in each election since 2002, providing further evidence of the functional capabilities of the ES&S Scanner. In fact, Jefferson County ran approximately 95,000 ballots in 11 hours in the 2007 mail ballot election, demonstrating the capacity of the ES&S Scanner. The accuracy of the ES&S Scanner is further evidenced by the multiple public pre-election tests and post-election audits conducted by Jefferson County during each election cycle.

The Testing Board further claimed that ES&S neglected to provide the necessary documentation to prove that the ES&S Scanner was federally certified. The Testing Board based its decision on the fact that ES&S had not provided a testing matrix, which is used to verify federal certification. ES&S, however, has records demonstrating that this testing matrix was

provided to the Testing Board. Moreover, even without this testing matrix documentation, the fact that the ES&S voting systems are already federally certified is evidenced by the 2006 State certification process. Thus, there is no reason that this alleged lack of paperwork should serve as an impediment to certification, when there is no dispute as to ES&S's federal certification.

Given that the Testing Board has now successfully completed testing the ES&S Scanner and such re-testing results demonstrate that the ES&S Scanner meets or exceeds the State certification standards, Jefferson County respectfully requests that the Secretary reverse his decision concerning the ES&S Scanner.

### **2.a. The ES&S Scanner Conditions**

In addition to refusing to certify the ES&S Scanner, the Testing Board recommended certain conditions for usage if the ES&S Scanner is certified. Condition #4 establishes a requirement to hand count a certain number of ballots for audit purposes. While Jefferson County does not generally object to the hand count audit procedure, the requirements established by this condition make the performance of a hand count too impractical, time consuming, and costly. Using the 2004 Presidential Election turnout as a baseline, Jefferson County would be required to hand count up to as many as 32,400 ballots. Such a large audit requirement could delay finalizing election results for weeks or months, leading to election uncertainty (not to mention problems with obtaining accurate hand count tallies of 30,000+ ballots). Thus, Jefferson County requests that the hand-count audit requirement be revised to reflect the audit requirements currently defined in state statute and the Secretary of State rules.

### **3. The iVotronic**

The iVotronic was not certified by the Testing Board based on security concerns. Specifically, the Testing Board found that the iVotronic could be disabled by a malicious voter employing a magnet. This alleged security problem is suspect and, more critically, does not result in any data loss, vote switching, or other vote tabulation problems. As a preliminary matter, ES&S, Jefferson County, and Mesa County have each independently attempted to duplicate the results of the Testing Board's magnet test and have been unable to disable any iVotronic voting machines, even when testing with industrial strength magnets. Second, even if the Testing Board findings are correct, it does not follow that the iVotronic should not be certified. Rather, the response of the iVotronic to the presence of a magnet demonstrates that the iVotronic is a secure machine. The reported results of this test found that the iVotronic shut itself down, while simultaneously saving all information relating to previously cast ballots. The iVotronic lost no information, retained all data reflecting the results of previously cast ballots,

and, as a security measure, the machine shut itself down when the tampering occurred. Therefore, if someone attempted to disable the iVotronic during an actual election, the machine would shut down, protecting the results of previously cast ballots. Poll workers could then simply replace the affected machine with another back-up/auxillary voting machine, several of which are always maintained on hand at each polling place. Additionally, if a machine shut itself down due to tampering, poll workers could likely determine which individual attempted to manipulate the machine. Without any evidence that this particular test is either reproducible or that it results in any inaccurate counts or lost ballots, there is no basis for decertifying the iVotronic on the basis of this experiment, which, incidentally, is not one of the requisite tests set forth in Rule 45.

A second basis the Testing Board cited in connection with the iVotronic relates to voting booth design. The current design used by ES&S and Jefferson County is HAVA and ADA compliant. There is no justification, therefore, for claiming the voting booth design is deficient under the State certification rules.

The Testing Board also failed to certify the iVotronic due to one of the same claims it cited for the ES&S Scanner, which was that the Testing Board did not receive certain federal certification documentation. As stated above, ES&S has documentation showing that the requisite materials were provided to the Testing Board. Moreover, during the 2006 certification process, the State concluded that the ES&S voting equipment was federally certified.

### **3.a. The iVotronic Conditions**

Jefferson County seeks reconsideration of certain conditions imposed by the Testing Board on the use of the iVotronic. Such conditions, if not removed, would constitute constructive decertification of the iVotronic. Jefferson County specifically challenges the first and eighth conditions imposed on the use of the iVotronic.

Condition #1 requires the purchase of an external battery back-up for each iVotronic machine. The federal requirements require a 2-hour continuous back-up battery life. Colorado has imposed a 3-hour continuous back-up battery life requirement. The iVotronic back-up battery provides 2 hours and 57 minutes of back-up battery life during continuous voting, which clearly is sufficient to meet the State's substantial compliance requirement. This three-minute discrepancy is not significant enough to require Jefferson County to purchase additional external batteries for each of its 1,800 iVotronic machines.

The eighth condition imposed on the use of the iVotronic voting machine is even more problematic. Condition #8 reads: "Devices deployed in Colorado shall require the disabling of the PEB activation port due to security concerns discovered through functional testing." The iVotronic machine does not work without the PEB since this device is necessary for a voter to cast his/her vote, and the security concerns cited by the Testing Board are those discussed and refuted in the first paragraph of Section 3 above. Accordingly, denying the use of a PEB effectively prevents a voter from using the iVotronic machine. This condition, therefore, constitutes constructive decertification, and Jefferson County respectfully requests that you remove Condition #8.

#### **4. The Testing Process**

The testing process adopted by the Testing Board lead to inconsistent and inconclusive findings, and it was this process, rather than the existence of any real issue with the ES&S voting equipment, that lead to the Decision. The lack of transparency of the Testing Board's process and the refusal of the Testing Board to invite those with expertise and familiarity with the voting machines to join in the process inevitably lead to the Testing Board's inability to complete the testing. The Testing Board chose to conduct closed door testing procedures, resulting in the unintended consequence of eroding public confidence in a voting system that has proven time and time again to be secure and accurate. Jefferson County respectfully requests that the Secretary weigh the successful experiences of Jefferson County and Mesa County using ES&S machines during actual elections as evidence that the ES&S voting machines accurately and securely tabulate votes and meet the objective goals of the State certification standards.

#### **5. Due Process**

The appellate procedure established by the Secretary also raises fundamental due process concerns for political subdivisions such as Jefferson County. To date, Jefferson County has been denied access to the Testing Board's documentation and videotapes. Jefferson County has not been able to review the records of the certification process and it was not invited to participate in the closed door testing process. Accordingly, Jefferson County is forced to appeal a secret testing process for which no records have been released, severely prejudicing Jefferson County's rights to challenge the Testing Board's conclusions.

#### **6. Conclusion**

Jefferson County has confidence in the accuracy and security of the ES&S voting system and believes that during the hearing on reconsideration it can provide evidence to allay any

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Page 6

concerns raised by the Testing Board. Jefferson County respectfully requests that you reconsider your Decision and the conditions imposed therein and that you find that the ES&S voting system should be certified based on the additional evidence provided by ES&S and Jefferson and Mesa Counties, in addition to the results of re-testing performed by the Testing Board. Jefferson County reserves the right to raise additional issues or supplement this request with additional information as records are provided to it. Jefferson County further requests that you collaborate with Jefferson and Mesa Counties and ES&S to find a mutually acceptable date to hold a hearing on reconsideration. I am available to discuss this matter further if you have any follow-up questions.

Sincerely,



Pam Anderson  
Jefferson County Clerk and Recorder

cc: Steven M. Pearson, Vice President, Certification, ES&S  
Janice Rich, Mesa County Clerk and Recorder  
Lyle Dechant, Mesa County Attorney  
Ellen Wakeman, Jefferson County Attorney  
Jefferson County Board of County Commissioners