

June 6, 2014

BY EMAIL

Honorable Scott Gessler
Colorado Secretary of State
1525 Sherman Street, 7th Floor
Denver, CO 80203
Leeann.morrill@state.co.us

Re: Preliminary comments regarding the changes to Election Rules
concerning voting system conditions for use

Dear Secretary Gessler:

As you know, this law firm has been involved with various changes and proposed changes to the Colorado Election Rules and has represented Myriah Sullivan Conroy and Jeffrey Sherman with respect to the use of Direct Electronic Voting Machines (“DREs”) throughout Colorado elections. We have conducted an initial review of the proposed rules codifying Colorado’s certified voting equipment conditions for use (“Conditions for Use”), and we offer the following preliminary comments.

Generally, as the Secretary’s Office is most likely aware, we support the removal or elimination of all DREs to the full extent allowed under the applicable laws, and we also support the elimination of redundant or superfluous Conditions for Use, which is the stated goal of the Secretary’s proposed changes. Further, we support the general idea of codifying Conditions for Use in permanent rules, to the extent that such codification strengthens DRE security and/or discourages their widespread use.

Despite these areas of agreement with your proposed course of action, we believe the review time for all of these significant changes was insufficient in light of the scope of the changes being suggested by the Secretary’s Office. From the materials provided, there is no indication that the Secretary’s Office consulted with computer scientists who are well-versed in DRE security to determine if there are any negative security effects from these changes. If such consultation did occur, the public should be made aware. If such consultation did not occur, the public should be informed of these reasons for not conducting such consultation.

As a general matter, we reaffirm our position that any changes should strengthen, not weaken, DRE security. As an example, we support the requirements of Election Rule 11.3.2 (as

June 6, 2014

Page 2

cross-referenced by the proposed changes to the Conditions for Use) which mandate public, transparent logic and accuracy tests. DREs are well-documented across the country as being subject to malfunction, improper or mistaken administration by election officials, hacking, and other election-threatening problems. Although we have not been able to review every single change to the Conditions of Use in great detail, any change that relaxes or reduces DRE security should be rejected.

We look forward to working with you and your office as the rulemaking process progresses. Please do not hesitate to contact us with any questions.

Sincerely,

s/ Matthew E. Johnson
Matthew E. Johnson

cc: Myriah Conroy
Jeff Sherman
Andrew Efaw
Mark Lyda