



## Verified Voting Statement on the Acquisition of Premier Election Solutions

The recently announced acquisition of Premier Election Solutions (formerly Diebold) by its largest competitor, Election Services & Software (ES&S), requires close scrutiny, as it raises greater concerns about the security, transparency and cost of elections and creates a profound anti-competitive effect in the shrinking marketplace for voting systems.

We welcome the call by Senator Charles E. Schumer, chair of the U.S. Senate Committee on Rules and Administration, for a Department of Justice probe of the Premier sale,<sup>1</sup> and we hope the Department acts promptly on the recommendation. In addition, a judge for the US District Court in New Jersey has set a date for a hearing on an injunction to block the merger.<sup>2</sup> The request was brought by a vendor who argues that the resulting stranglehold on the market raises a "threat of irreparable harm" to voters.

Verified Voting estimates that some 64 percent of the nation's registered voters live in jurisdictions where ES&S or Premier vote tabulating equipment is used.<sup>3</sup> With ES&S' acquisition of Premier's contracts, it dominates the marketplace.

What can we expect to see? In the near future, many election jurisdictions, especially those using direct-recording electronic voting systems, may need to replace their current voting systems as equipment purchased to comply with the Help America Vote Act of 2002 nears the end of its expected life.<sup>4</sup> In addition, jurisdictions regularly need to renew or enter into new contracts for maintenance and other services like ballot programming. *Without competitive alternatives, a post-merger ES&S has jurisdictions over a barrel* when it comes to renewing or negotiating new contracts. We can expect higher costs for ongoing services as well as future procurement of voting equipment and support services including ballot programming, printing, equipment maintenance and supplies.

We can also expect to see *substantial increase in vendor control over key contract provisions*. Contracts between election jurisdictions and voting system vendors have been demonstrated in some instances to present significant barriers to election transparency. Contracts may limit jurisdictions' access to source code, or restrict their ability to conduct independent evaluations of voting systems performance and security. There are even two known cases of a contract between a county and ES&S containing a provision that stipulated that the terms of the contract itself were confidential.<sup>5</sup> Lacking the negotiating leverage that robust competition provides, counties could face pressures to accept contracts that do not provide sufficient transparency.

There are still too many states using voting systems that cannot be audited, and too few states conducting manual audits; essential safeguards are not in place. With the increased computerization of elections, a growing number of jurisdictions entrust critical aspects of the voting process to voting machine vendors. When fewer vendors provide services such as maintenance and ballot programming,

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<sup>1</sup> [http://schumer.senate.gov/new\\_website/record.cfm?id=317761](http://schumer.senate.gov/new_website/record.cfm?id=317761)

<sup>2</sup> <http://legaltimes.typepad.com/blt/2009/09/judge-sets-hearing-on-injunction-to-block-voting-machine-merger.html>

<sup>3</sup> Based on 2008 voter registration data. <http://verifiedvoting.org/verifier>

<sup>4</sup> "Ongoing Challenges in Voting System Certification." By Douglas W. Jones. Presented at the Innovations in Election Technology Conference, May 28, 2009. <http://www.cs.uiowa.edu/~jones/voting/uminn09.shtml>

<sup>5</sup> "Contractual Barriers to Transparency in Electronic Voting." By Joseph Lorenzo Hall. 2007 Usenix/ACCURATE Electronic Voting Technology Workshop. [http://www.usenix.org/events/evt07/tech/full\\_papers/hall/hall.pdf](http://www.usenix.org/events/evt07/tech/full_papers/hall/hall.pdf)



the risk of widespread compromise of election security increases.<sup>6</sup> And in the longer term, jurisdictions now using Premier equipment are likely to end up with ES&S equipment, creating a software monoculture that makes elections increasingly vulnerable to insider or viral attack.

Whether or not it is possible to mitigate the security risks posed by a single vendor's expanded scope with sound verification measures, we have urgent concerns about the effect that the merger may have on the ability of election administrators to obtain products and services on fair terms, and under contract provisions that foster, rather than inhibit, election transparency. *Consolidating election vendors may also stifle innovation in new systems, equipment and ideas like open-source voting.*

**What can be done?** In the near term, the Department of Justice should carefully examine this merger, as Senator Schumer and others have sought. Jurisdictions planning to obtain new equipment or upgrade existing equipment should do everything possible to seek protective contract provisions, such as barring vertical integration of election products and services.

Recently, New York took steps to de-couple the market for ongoing election services from the equipment market. There, stringent requirements—especially for vendor documentation—support competitive bidding and resultant lower costs for contracts to provide training, ballot printing, and put election programming in the hands of local election officials, rather than vendors. But few jurisdictions have the kind of market leverage created by NY's size and regulatory environment.

A security-critical computer system like a vote tabulator could very well have flawed or malicious software that can affect its core functions, no matter who develops, sells, or services the system. **For our elections to merit any confidence from the electorate, we must verify the accuracy of vote counts, with voter-marked paper ballots, strong measures to protect the chain of ballot custody, and routine robust manual vote tabulation audits.**

Congress should enact HR 2894 and S.1431, the Voter Confidence and Increased Accessibility Act, which would require voter-marked paper ballots and random hand-counted tabulation audits, and improve chain of custody procedures.

It is unclear if the remaining smaller vendors on the market will be able to compete effectively for contracts with a post-merger ES&S, and in how many states. Congress and the Department of Justice should work to address this issue as quickly as possible in order to ensure that we do not see state and local jurisdictions having the terms of voting system contracts all but dictated to them.

Congress should consider measures that make it easier for local governments or non-governmental organizations to obtain federal voting system certification, perhaps by requiring a fixed fee for the testing of voting equipment, with the balance of initial testing costs funded by the federal government. If initial testing reveals design deficiencies, vendors would pay for the cost of additional testing.

In sum, the purchase of Premier Election Solutions by the nation's largest voting system vendor is a serious cause for concern—and an opportunity for policymakers to take up reforms that are necessary no matter the outcome of any investigation or litigation.

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<sup>6</sup> "The Machinery of Democracy: Protecting Elections in an Electronic World.," The Brennan Center for Justice Task Force on Voting System, Security, June 2006 p. 92. [http://brennan.3cdn.net/52dbde32526fdc06db\\_4sm6b3kip.pdf](http://brennan.3cdn.net/52dbde32526fdc06db_4sm6b3kip.pdf)