



7 July 2010

Dawn K. Roberts, Interim Secretary of State  
Florida Department of State  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Roberts,

**Re. Threats to Florida's 2010 elections: Voting System Defects, Lax Cyber Security, Administrative Procedures, and Inadequate County Funding**

We are writing to express concern over threats to Florida elections including voting systems defects, cyber security, administrative procedures, and inadequate county funding. All pose serious threats to Florida elections including the 24 August primary in 49 days and the general election in November.

The Department is charged with the principal authority and responsibility for Florida elections. The Secretary serves as the state's Chief Elections Officer. The 2010 Legislature added to the Department's authority by creating express preemption over all matters set forth in Chapters 97-105, virtually the entire election code.<sup>1</sup>

Whether by specific authority or in the more general role as the public's chief advocate for elections, we respectfully request you address the following issues with all due urgency to ensure Florida's upcoming elections run as intended and produce results that can be relied upon.

Where permanent solutions cannot be implemented before the primary election, there may be time to implement effective workarounds beforehand, and then consider more permanent solutions.

Florida's 67 county Supervisors of Elections may find adequate county funding difficult to secure in these tough financial times, particularly for workarounds and contingencies. We urge the

Department to assist Supervisors to secure adequate resources as a matter of statewide election integrity.

We trust more lasting solutions can be implemented by the general election in November. We know you share our appreciation that elections take place somewhere in Florida every week and that all elections deserve nothing short of excellence.

## 1. Voting System Defects

Because Florida is one of eighteen states that require no federal certification of voting systems, the Department of State's Bureau of Voting System Certification is the sole gateway through which Florida's voting systems are certified and regulated for security and functionality. We appreciate the dedicated work the Bureau performs on a regular basis. Nonetheless, it is of concern that two documented voting system defects remain unresolved as time is running out before the primary.

- a. **Defective firmware in Premier AccuVote OS optical scanners – causing serious errors in Operating System reports, which affects results reports and other reports – requires replacement of firmware chips; 14-17 Florida counties affected.**

It is our understanding that AccuVote OS machines running the Assure 1.2x system and OS firmware version 1.96.13 are implicated. The problem is with the firmware, and remedy requires replacement of the machine-mounted chips in each machine. We understand that to date, little or no progress has been made to develop, test, distribute or install the necessary replacement chips for affected counties.

The window of opportunity to replace the chips before the primary has passed, leaving Florida dependent on thousands of defective machines. The problem, the solution, and the urgency have been known by the Department, vendors, and the affected counties for at least sixty days.

It is our understanding that effective workarounds may exist but they will be resource-intensive and time-consuming. According to its website, the Department has issued no Technical Advisories or Letters on this matter, which is troubling. Affected county Elections Departments are left to fend for themselves, which has

the potential to threaten elections and create election procedures that lack uniformity, and could lead to confusion and litigation.

Workarounds will cost counties unbudgeted time and money, which is no small matter in such tight financial times, and in the final run-up to major elections.

It is unclear where the fault lies allowing this condition to exist. The defective equipment has changed hands twice in nine months and has been the subject of an antitrust case brought by the United States Department of Justice, joined by nine states, including Florida. The Final Judgment in that case was signed by the court last Wednesday, 30 June.<sup>2</sup>

It is our understanding that the source code, required to make the necessary firmware replacement chips, was handed over only last week to the new owner, Dominion Voting Systems, Inc. (Dominion) by the previous owner, Election Systems & Software, Inc. (ES&S). That raises questions about how Florida counties that switched vendors from ES&S to Dominion under the antitrust Final Judgment, were left without effective service from any vendor on this serious defect, as we head into a major election.

We trust the Department and the Bureau of Voting System Certification, will demand vendors provide timely, secure and serviceable voting systems to Florida counties, and take decisive action to ensure vendors are required to make counties whole when those vendors fall short.

We trust the Department is seeking the assistance of the U.S. Department of Justice and the Office of the Florida Attorney General regarding any part of this problem that may be related to the antitrust case and full compliance with terms of the Final Judgment.

We urge the Department to inform the U.S. Election Assistance Commission (EAC) Clearinghouse of this issue so that it may log the information in its database and follow up appropriately with the vendor as well as with any other affected U.S. jurisdictions.

- b. ES&S DS-200 optical scanner freezing issue – affecting 16 Florida counties:**  
The EAC issued its first Product Advisory on 25 June 2010, and it concerned this issue.<sup>3</sup> It advises jurisdictions using ES&S DS-200 optical scanners of a yet undiagnosed problem and begins:

**Advisory:**

**Counties and jurisdictions with this product should be aware of “power down” and “freeze” issue experienced during Logic & Accuracy (L&A) testing and Election Day.**

**Status:**

**EAC has launched an Informal Investigation and is working with ES&S to find a root cause to these issues.**

According to the Department’s website, no similar Technical Advisories or Letters have been issued on this matter in Florida. While the EAC’s Product Advisory is helpful and informative, it is not binding on Florida counties.

Cuyahoga County, Ohio, where this problem was first reported in May, continues to develop workarounds and recommends the EAC procedures be treated as “a starting point” in addressing this issue. They continue to work on administrative procedures to get in front of security, capacity and other potential impacts that might damage elections – particularly to do with securing additional back-up machines, memory sticks and protocols for their use.

We urge the Department to take all necessary action to require the vendor to remedy this problem quickly and effectively, and to make the state and counties whole for negative impacts, including those that arise from necessary workarounds.

We urge the Department to provide sufficient guidance to counties to uphold election security, accuracy and uniformity, and to report incidents and outcomes back to Florida counties and to the EAC so that other jurisdictions around the country can benefit from Florida’s experience.

## 2. Cyber Security and Administrative Practices

We appreciate the importance of innovation in elections. However, innovation has accelerated at an exhausting pace in recent years, not all of it positive. We trust you agree that the pace of innovation must remain constrained by prudence, a transparent public process of evaluation and adoption, and the law, even as it is pressed forward by the exuberance of various interests. The law, too, must enjoy corresponding innovation, constrained by similar caution and prudence.

It is a concern whenever innovation breaks these reasonable constraints and accelerates too fast. Below are two examples where that may be taking place. We urge the Department to redouble its efforts to ensure innovation remain within the constraints of prudence, transparency and the law, regardless of the pressure to go faster.

**a. Expanding electronic transmission of voted ballots (internet voting): lacks adequate cyber security, jeopardizes votes, elections and violates Florida law**

On 18 May 2010, David Drury, Chief of the Bureau of Voting System Certification, met with county elections departments' Information Technology (IT) staff during the summer conference of the Florida State Association of Supervisors of Elections (FSASE) in Sanibel.

There, Mr. Drury informed the group that Florida would be allowing counties to expand the use of electronic return of voted ballots in the 2010 general election. He mentioned expanded email voting specifically, and discussed that certain security measures would be left to county discretion - that encryption, for instance, would be optional.

When questioned by the audience about the legality of such an initiative, he said the Department intended to rely on amendment to an administrative rule, *1S-2.030 Electronic Transmission of Absentee Ballots*.

That rule was the subject of a Department workshop a month earlier, on 19 April 2010, and the Department has recently confirmed that the amendment process for that rule is proceeding.

Florida Voters commented on the draft changes to 1S-2.030 for the April workshop, including concern that the draft would allow serious security breaches and violates state law on numerous counts.<sup>4</sup>

We urge the Department to stand down all efforts to expand electronic transmission of voted ballots in 2010. We urge it not to approve any further “pilot programs,” similar to 2008’s Scytl demonstration, or otherwise. The Department has quite enough to deal with getting current technology to function properly without reaching into the darkness for more innovation.

**b. Miami-Dade County may be planning to automate and centralize ballot accounting procedures to be less secure, less transparent and in violation of Florida statutes**

Florida Voters wrote to the Miami-Dade Supervisor of Elections on 17 June requesting confirmation of ballot accounting procedures in upcoming elections and awaits his reply.<sup>5</sup>

We appreciate that ballot accounting – making sure the number of ballots cast in each precinct matches the number of voters who signed in to vote – comes at the end of a long day for pollworkers. We appreciate that administering it can be frustrated by the inherent challenges of many separate ballots, signatures, temporary workers and other factors that make perfect accounting for all ballots burdensome and imperfect. We appreciate that any good administrator would naturally look to automate and streamline the process in order to get on with the tabulation.

Our concern is that some essential elements of ballot accounting *not* get lost in the laudable effort to make it as efficient as possible. It is important that ballot accounting is performed in the precinct to nip small problems in the bud while they are still easily diagnosed and before data is merged into a larger dataset. It is important that each precinct’s Election Board conduct ballot accounting because they’ve spent the entire day with the ballots and the voters and have a unique understanding of events; they know best how to diagnose discrepancies and spot problems early. It’s important the public be allowed to witness the proceedings so elections remain transparent, trusted by first hand public participation, not dependent upon hearsay, or delegated to the opaque custody of others.

These essential elements are clearly required by Florida law and will be lost if ballot accounting is removed from the precinct. To improve efficiency, ballot accounting rules have been amended in recent years but without compromising the elements described above. We urge you to ensure rules are followed and further innovation remains secure, transparent, uniform and within the law.

**3. Help Improve County Funding for Elections:** Finally, we urge you to use your good offices to assist counties to secure sufficient funding needed to maintain excellent election standards in Florida. We know your authority over funding is limited but the Department plays a big and important role nonetheless. We urge the Department to:

- a. **Hold vendors accountable:** Voting system vendors come into this state only as the Legislature and the Department provide. The Legislature leaves the Department considerable authority to regulate vendors and the Department can ask the Legislature for additional authority if needed.

Since each county purchases its own voting system, there is a disconnect between state authority over vendors and country responsibility to execute contracts with them. Vendors know this well and the condition invites abuse.

Counties and the public depend upon the Department to champion their needs even when they are not directly the needs of the Department. We urge you to keep the public interest paramount at all times and hold vendors fully accountable for the precious components of democracy they are licensed to sell Florida counties. This includes making counties whole when products fail.

- b. **Share federal funds:** The Help America Vote Act of 2002 (HAVA), and other federal legislation, has appropriated various funding to the state, over which the Department has some discretion. It plays a role in deciding whether funds are held by the Department or are distributed to the counties, either by its specific authority or by how it chooses to lobby the Legislature.

Again, the counties and the public depend upon the Department to champion their needs, along with the direct needs of the Department. We urge you to specifically review Department policy on HAVA funds reimbursement, and generally to better

balance the overall distribution of federal funds between the Department and the counties.

**c. Advocate for county elections departments' ability to appeal county budget decisions, as Governor Bush's 2001 Task Force recommended.**

Following the disastrous 2000 election, Governor Bush charged a bipartisan group of outstanding Floridians to consider the most important changes needed to improve Florida's elections. In its report, *Revitalizing Democracy, The Governor's Select Task Force on Procedures, Standards and Technology*, the Task Force wrote:

**RECOMMENDATION 11: Appeal of Budgets for Elections Supervisors. The Florida Legislature should authorize county Elections Supervisors to appeal to the State Cabinet decisions made by County Commissions about budgets for the operations of Elections Supervisors, similar to the appeals authorized for other Constitutional officers.<sup>6</sup>**

Tough economic times like these bring the wisdom of that recommendation into sharp focus. Modern elections are highly technical and complex. The finer points can easily be lost on County Commissions whose members have many things competing for attention.

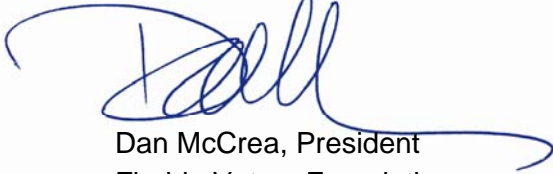
With cutbacks, Supervisors may find it almost impossible to budget resources for vital workarounds and other contingencies. They may find County Commissions unable to appreciate the extent to which underfunding their departments can jeopardize Florida's elections.

Florida Voters agrees with the Task Force that extending Supervisors of Elections the ability to appeal county budget decisions to the Cabinet is vital to Florida election integrity. We urge the Department to advocate for this facility at every opportunity, in both the near term and the long term.

We would appreciate your reply to how the Department is addressing these issues, including those immediate actions necessary to secure next month's primary and the November general elections.

We appreciate your service to Florida elections. Thank you and please don't hesitate with any questions further to these matters.

Very truly yours,



Dan McCrea, President  
Florida Voters Foundation

cc with cover to:

Hon. Thomas R. Wilkey, Executive Director, U.S. Election Assistance Commission  
Stephanie A. Fleming, U.S. Department of Justice, Antitrust Division  
Attorney General Bill McCollum  
Senate President Designee, Senator Mike Haridopolos  
Speaker of the House Designee, Representative Dean Cannon  
Hon. Gwen Chandler, President, Florida State Association of Supervisors of Elections  
Lester Sola, Supervisor of Elections, Miami-Dade County

## Endnotes

<sup>1</sup> [CS/CS/HB 131](#), Section 1, creating Section 97.0115 F.S.

<sup>2</sup> *United States v. Election Systems & Software, Inc.*, No. 10-380 (D. D.C. June 30, 2010).  
<http://www.floridavoters.org/downloads/US%20v%20ES&S%20Final%20Judgment%202010-06-30.pdf>

<sup>3</sup> *Product\_Advisory-ES&S-06.25.10 FINAL*, [http://www.floridavoters.org/downloads/Product\\_Advisory-ES&S-06.25.10%20FINAL.pdf](http://www.floridavoters.org/downloads/Product_Advisory-ES&S-06.25.10%20FINAL.pdf)

<sup>4</sup> *FVC to DoS w-Mark-up re. 1S-2.030 Workshop – 2010-04-19*,  
<http://www.floridavoters.org/downloads/FVC%20to%20DoS%20w-Mark-up%20re.%201S-2.030%20Workshop%20-%202010-04-19.pdf>

<sup>5</sup> *FVF to Sola re 101.5614 compliance – 2010-06-17*,  
<http://www.floridavoters.org/downloads/FVF%20to%20Sola%20re%20101.5614%20compliance%20-%202010-06-17.pdf>

<sup>6</sup> *Revitalizing Democracy - FL Task Force - 2001-03*,  
<http://www.floridavoters.org/downloads/Revitalizing%20Democracy%20-%20FL%20Task%20Force%20-%202001-03.pdf>