



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
1500 11th Street, 6th Floor | Sacramento, CA 95814 | Tel (916) 653-7244 | Fax (916) 653-4620 | www.sos.ca.gov

July 5, 2007

Steven M. Pearson
Vice President, Certification
Election Systems & Software, Inc.
11208 John Galt Blvd.
Omaha, NE 68137

**Via Fax 402-593-8107 and
E-mail smpearson@essvote.com**

Re: InkaVote Plus

Dear Mr. Pearson:

I am writing to recapitulate the current status of the InkaVote Plus voting system in California's certification review process.

First, contrary to your public statements, the InkaVote Plus voting system is not included in Secretary of State Bowen's Top-to-Bottom Review of voting systems. The repeated failure by ES&S to meet the deadlines for participation made this impossible. In a letter dated June 8, 2007, long after ES&S had exceeded the time allowed, I stated that there would be no further extensions of time for ES&S to cooperate fully by submitting a signed agreement, source code and a deposit of funds for the Top To Bottom Review. On June 15, 2007, I presented you with a final demand for evidence of full compliance that same day. ES&S chose not to deliver its materials until June 26, 2007, three months after they were first requested.

The extremely tardy submission of the executed agreement, source code and escrow deposit made full examination and testing of the InkaVote Plus voting system before the end of July impossible. For months, we made it very clear that the Top-To-Bottom Review must be completed in July. That timetable allows Secretary Bowen to make decisions concerning the certification of the reviewed voting systems by August 3, 2007, decisions that will be legally binding for the presidential primary election to be held six months later, on February 5, 2008.

Notwithstanding the foregoing, the Secretary of State continues to have a duty to review periodically voting systems certified for use in the state, pursuant to Section

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19222 of the California Elections Code. Under the circumstances, we are considering the alternative of a phased review of the InkaVote Plus voting system. In a phased review, we would conduct as much examination and testing of the InkaVote Plus voting system as the remaining time in July allows. The remaining portions of the full Top-To-Bottom Review would be completed thereafter. We continue to evaluate the feasibility of such a phased review, in consultation with the Principal Investigators in the Top-To-Bottom Review. This process is likely to be more expensive than had you complied in a timely fashion, as the source code, red team and accessibility teams will need to be re-assembled to continue the testing. We will keep you informed as we determine how best to proceed.

One possible consequence of ES&S's tardiness and the resulting impossibility of completing a comprehensive review in a timely manner could be the imposition, as a precautionary matter, of additional conditions on the use of the system. Should the results of the full review of the system subsequently warrant it, the Secretary could then revise or remove such conditions.

Next, you asked us to withdraw the request we submitted to Iron Mountain for access to the source code for the InkaVote Plus voting system that ES&S is required by California law to deposit with an approved escrow provider. We have also been notified by Iron Mountain that ES&S has lodged an objection to our request for access. We do not intend to withdraw our request and will continue to attempt to exercise our legal right to access the source code under the broad authority conferred upon the Secretary of State by Section 19103(c) of the Elections Code, as amended in 2004.

With regard to the InkaVote Plus source code, it has come to our attention that there are version number discrepancies between the description provided by ES&S to Iron Mountain of the source code deposited in escrow and the description of the system as certified by the Secretary of State on April 21, 2006. As you know, Section 19213 of the Elections Code prohibits any changes to a voting system after it has been certified without written notice to and approval by the Secretary, and Section 19103(a) requires that an exact copy of the source code as certified be placed in escrow. Section 19103(a) also prohibits use of a voting system if this requirement is not met. The version number discrepancies may represent no more than typographical errors. They could also indicate a more serious problem. This is one more reason why we will continue to insist on access to the escrowed source code.

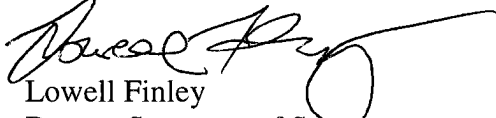
Finally, after obtaining a copy of the 2006 escrow contract between ES&S and Iron Mountain, it appears the contract is in violation of California law which specifically gives the Secretary of State the right of access to escrowed source code for any purpose that is in furtherance of her responsibilities for certifying and conducting periodic reviews of voting systems. We will be initiating discussions on this matter with you, Iron Mountain and Los Angeles County, which is designated as a beneficiary under the contract.

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Sincerely,

A handwritten signature in black ink, appearing to read "Lowell Finley", with a large, stylized flourish extending from the end of the signature.

Lowell Finley

Deputy Secretary of State

Voting Systems Technology and Policy

cc: Conny M. McCormack, Los Angeles County Registrar-Recorder/County Clerk
Judy Whitehurst, Principal Deputy, Los Angeles County Counsel
Jan A. Johnson, Iron Mountain Client Services Supervisor
Steve Weir, President, California Association of Clerks and Election Officials