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An urgent election situation now exists in Washington State due to actions taken by Secretary of State Reed in response to the new Washington law regarding primary elections. He approved the installation of new software lacking federal certification to count votes cast in six counties (King, Pierce, Kitsap, Snohomish, Klickitat, and Chelan). The population in these six counties constitutes over half the population of Washington.

Secretary Reed adopted a "Policy on Electronic Voting Systems" on July 7, 2004. That policy states "All components of an electronic voting system will have completed review and testing and be certified through the federal Independent Testing Authority (ITA)" and that "Federal certification provides an important review and accountability measure."

However, on July 16 he implemented emergency changes to the Washington Administrative Codes (WAC) that authorize the use of software that has not been certified by an ITA. Given their length and complexity, these WAC changes must have already been nearly completed at the time he released the policy that they clearly violate. In addition, the uncertified software authorized by the new WACs was already under development since June.

In the last four weeks the six counties installed new election software that has not been federally certified and has only been tested for functionality. It will be used to count and tally votes in the September primary and is intended for the November general election as well.

The Secretary of State's action carries three significant risks:

- 1) **Maximum potential for error** because the software revisions were rushed and uncertified.
- 2) **Maximum potential for insider fraud** because the software revisions were developed after the candidate list was known, and the source code was not examined by an independent tester.
- 3) **High risk of legal challenges and delays to the election** based on points 1 and 2.

Under Washington Election Law, any judge or justice could delay the conduct or the certification of an election if the Secretary's actions constitute a wrongful act or neglect of his duty to safeguard the votes of the citizens of Washington. Such a high level of uncertainty could clearly qualify.

Considering the fact that both major parties are lining up lawyers preparing to challenge questionable results, the state is now vulnerable to expensive lawsuits based on very real grounds. So, beyond even the risk of election error and fraud, the Secretary's actions have created a situation in which all of Washington's voters could be disenfranchised for days, weeks, or months. Even worse, in the case of the Presidential Election, the votes of Washington's citizens could be ignored permanently if the delegation to the Electoral College cannot be certified in time.

To provide protection for the State, Secretary Reed should instruct the auditors of the affected counties to conduct robust manual audits of actual ballots cast in the September Primary. Specifically, we suggest that these auditors be required to audit 16% of their precincts, as the auditor of Klickitat County plans to do. The new software should be removed from the machines for the November election and replaced with the fully tested versions.

Respectfully,

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Washington State Senators and Representatives
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