



ELECTIONS DIVISION
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August 31, 2004

VotersUnite!
Ellen Theisen, Executive Director
660 Jefferson Avenue
Port Ludlow, WA 98365

Dear Ms. Theisen:

On August 23rd, 2004, your organization, VotersUnite, sent a letter taking exception to actions taken by the Office of the Secretary of State. Those actions, namely, provisionally certifying certain modifications to voting systems software in July and early August of this year, are mandatory to successfully implementing Washington's new partisan primary this fall.

We are not aware of any evidence suggesting that elections in Washington are at risk. Your letter dramatically overstates the risk of our office's actions on this fall's elections and understates the value of the measures our office and the counties have put in place to implement the new primary system. The letter does not acknowledge the extensive testing and procedures that our office instituted in certifying these modifications. The letter also does not acknowledge the checks and balances in Washington State law that the counties use to ensure the integrity of every election.

Your letter also proposes some solutions to the unique situation that the state faces this year. Our office agrees that as a matter of public trust additional measures are appropriate to protect the integrity of the systems in these unusual circumstances. We implemented those measures in Washington Administrative Code and they are being adopted by the counties using the systems. The County Auditors are actively encouraging the political parties to exercise their opportunity to audit the election results under provisions of Washington State law.

On the other hand, the suggestion that the previously certified software be reinstalled on the county voting systems after the primary was considered by this office. We concluded that this proposed course of action was not the best approach.

Why are the software modifications necessary?

The new primary system which was put in place in April of 2004 included rules for counting a consolidated ballot that are unique in the country. This meant the voting systems vendors needed to modify software to implement this new primary.

Specifically, the new law requires that a voter make a valid party selection before any votes for partisan office can be counted. In states that use a similar consolidated ballot, when the voter selects candidates of only one party, those votes are counted even if he/she does not make a valid party selection. A change to the current software was needed to accommodate this difference.

Why was it necessary to certify these modifications without first receiving national certification?

You question the process for certifying modifications to these systems without first receiving national certification. You correctly point out that the long-standing policy of this office has been that we certify voting system modifications only after the system has received national certification.

Several points should be made regarding this decision:

- Our office recognizes (as does Dr. Douglas Jones, the expert cited in your letter) that there are unusual and *rare* circumstances when it is necessary to install a patch or upgrade without first going through the national certification. The ability to conduct an election may depend upon making the change to a voting system when there is not enough time to go through the lengthy national certification. That is the case here.
- The implementing legislation for the partisan primary gave the authority to choose the ballot format to the County Auditor – not to the Secretary of State. The County Auditors in several counties, after weighing the pros and cons, chose to implement the consolidated ballot. Our office in consultation with these counties also came to the conclusion that the large urban counties faced a substantial risk of not meeting essential statutory election deadlines if they did not use the consolidated ballot format.
- In granting the legal authority for adopting administrative rules related to the examination and testing of modifications to voting systems to the Secretary of State, Washington State law (RCW 29A.04.610) also requires that the rules be “not inconsistent with federal and state law”. The state law allows the use of consolidated ballots. The law also specifically provides for a certification process in instances where functions or capabilities of the system are unique to this state (RCW 29A.12.080 (6)).

These systems are not new systems in the state of Washington. The counties have used these systems for years and in that time, these systems have repeatedly demonstrated in logic and accuracy tests and hand recounts that they function reliably and in a trustworthy manner.

- The modifications to these systems will be nationally certified either later this year or in 2005. The provisional certification requires that the vendor submit a nationally certified version that includes the required modification to our office for state certification in 2005.

Course of Action

Chief among our office's priorities in addressing these extraordinary circumstances is protecting the public trust in the voting systems. The actions taken by this office as part of this provisional certification are designed to insure that public trust.

The process of certification included:

- An entirely open and public process. Our aim was complete transparency. The observers of the process included political party members and several prominent critics of computerized vote tabulation.
- Functional tests of each system to ensure that the variety of ways that a voter might mark a primary consolidated ballot will be counted in accordance with the new Washington State law.
- An extensive test with thousands of ballots using mock elections on each system that simulated the complexity of both the primary and general election this fall. Our aim was to ensure that the systems will accurately tabulate ballots under the conditions of use this fall by thoroughly testing the systems.
- A new requirement that the counties audit these systems with a logic and accuracy test before and after Election Day. In the case of Snohomish County, this includes a requirement to conduct parallel monitoring of direct recording electronic equipment on Election Day.

The context of the certification was also taken into consideration.

Washington State law authorizes party observers to request hand-recounts of three precincts under specific circumstances (RCW 29A.60.170 (3)). State law specifically prescribes the circumstances whereby recounts may be conducted in Title 29A, Chapter 64, of the Revised Code of Washington. The County Auditors, however, are actively encouraging the political parties to exercise their opportunity to audit the election results.

Unlike many states in the country, Washington State law also allows any group of citizens to request and fund the cost of a hand recount of any contest. If the recount overturns the original results, the money is refunded. This is in addition to the mandatory hand-recount required when the difference between apparent winner of a contest and the next closest vote-getter is less than 150 votes and 0.25% of votes cast.

These recount procedures, which are employed in virtually every election in one or more counties, have time and again demonstrated the fundamental integrity and accuracy of the election systems in Washington. Evidence of malicious or fraudulent programming simply haven't been manifested in this state. The affected counties all do the ballot layout and set up the database in-house without any vendor involvement. These provisions along side the layers of

physical and operational security employed by the counties to protect the voting systems serve as an effective deterrent and shield against anyone who would want to try to manipulate the results.

In addition our laws require an extensive battery of tests conducted by the county prior to every election to detect potential errors. The Logic and Accuracy Test, conducted by the county in conjunction with the Office of the Secretary of State, is one of those tests designed to detect errors in the election setup.

Why not switch back to the previous system after the primary?

We considered this possibility. Given all the election administration issues involved, we determined the wisest course was not to require the counties change systems between the primary and general.

Instead, we included a volume/stress test of a mock general election, in addition to the primary, as part of the certification testing. This testing demonstrated the modified systems will continue to function correctly under the conditions of this fall's general election as well.

Those election administration considerations include:

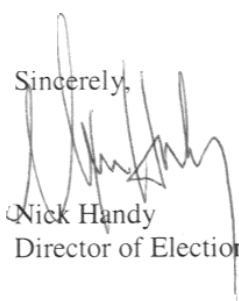
- The extremely tight statutory deadlines between the primary and general.
- The necessity of reinstalling software and prom chips on hundreds of precinct counters.
- The tests required to insure software has been correctly reinstalled and configured.
- The risks involved in the necessity of using a previous version of the voting system to layout the ballot for the general while simultaneously using the modified version to complete the tabulation of the primary on the same computer systems. In some cases, it would have been impossible.

Conclusion

We appreciate the scrutiny of oversight groups dedicated to preserving the integrity of the democratic process. Our office encourages your participation in the election process to ensure that elections are open, public, and trusted events.

We hope that you will understand that the decisions made by the County Auditors and this office are authorized and controlled by Washington State law and represent our best judgments based upon years of experience with election administration and voting systems. Our desire is to serve the voters by implementing fair and impartial elections that are well managed. That is our paramount concern.

Thank you for giving us the opportunity to respond to your concerns.

Sincerely,

Nick Handy
Director of Elections

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of STATE**

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