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March 10, 2005

Ms. Susan Bysiewicz  
Secretary of the State

Dear Madame Secretary of the State:

Thank you for sharing with us the proposed amended language for SB 55. We have given it a careful review in the short time available. We appreciate your openness and inclusiveness in this very important process and we share your goal to draft legislation that will truly promote voting accuracy, integrity, and security through voter verified paper records.

Nevertheless, we are concerned that the proposed language of the amendment will cause SB 55 to fall short of that desirable goal. We therefore offer the following items for your consideration and we hope to be able to discuss these points with you as early as possible.

## **I. Terminology**

There are several terms that have been used to signify the voter-verified paper record (VVPR), including "receipt," "ballot," and "audit trail." We prefer the term "ballot," because it signifies that the paper record is the only verifiable record of the voter's intent and should therefore be considered the official ballot in the case of a discrepancy with the electronic ballot. However, because SB55 uses the term "record" in its title---An Act Promoting Voting System Accuracy, Integrity, and Security Through Voter-Verified Paper Records---we will use the term "record" throughout this document.

## **II. General Concerns**

**1. Accessible Voter-Verified Paper Record (AVVPR).** Our first concern is that the proposed language does not call for an AVVPR. An AVVPR is a VVPR that can be verified by voters with disabilities.

It was our understanding after the February 24 meeting in your office with Michael Fischer and Christina Spiesel, representing TrueVoteCT, that we would call jointly for SB55 to be amended to require an AVVPR. Such a requirement would address the needs of the disability community while at the same time guaranteeing that all voters are given the opportunity to verify votes cast on election machines.

As we pointed out during that meeting there are several certified electronic voting systems that meet this qualification, including the AccuPoll and Avante systems as well as (possibly) the Populex system. Also, there is the ES&S's AutoMark system, which is currently undergoing the federal certification process and is expected to receive that certification soon.

Therefore, we would recommend that SB 55 be amended to require an AVVPR.

**2. Mandatory, Manual, Random Recount (MMRR).** The proposed language in the amendment takes a step in the right direction by calling for mandatory monitoring of voting machines through a hand recount after each election. Unfortunately, this section is vaguely worded and does not go far enough in describing or defining the monitoring process. In order to assure the integrity of elections, it is essential that the machines to be manually audited be selected in a random fashion. We return to this point below.

**3. Ballot of Record.** The proposed language does not specifically state that the AVVPR is the ballot of record in case of a discrepancy between the manual count and the machine count. The very reason for requiring an AVVPR is that we cannot trust that the electronic vote correctly records the voter's intent because the voter has no means of verifying the accuracy of those invisible, electronic ballots. Because the AVVPR does record the voter's intent, it should receive precedence over the electronic ballot as the ballot of record. We return to this point below.

**4. Effective Date of Legislation.** We have a concern about the change of the effective date in the proposed amendment. In the original SB 55, the effective date was July 1, 2005. The effective date in this proposed amendment is January 1, 2006. We hope this change does not indicate that the State wants to purchase DREs without AVVPRs to use in the November 2005 election.

### III. Specific Concerns

In addition to these general concerns, we would raise the following specific points regarding the language in the proposed amendment. We believe that these points do not alter the intent of the amendment, but merely tighten up the language so as to make that intent clearer.

#### A. Section d(1) Concerning the AVVPR.

Section (d) states, in part, that a voting machine approved by the Secretary of the State shall be so constructed as to produce an individual, permanent, voter-verified paper record for each elector casting a vote on the machine. Each such record shall (A) be suitable for a manual audit of such voting machine as described in subsection (e) of this section, (B) be made available for inspection and verification by the elector prior to the elector casting the elector's official vote on the voting machine, and (C) be preserved in the same manner in which other election materials are preserved after the election.

We find several potential problems with the language in this section.

1) **The AVVPR must be a record of the voter's vote.** Nowhere does this language state that the AVVPR is a record of the voter's vote. The bill should also state that in verifying the AVVPR, the voter is verifying that the AVVPR accurately reflects the voter's intent. This is the standard language that one finds in other AVVPR legislation---e.g.,

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Representative Holt's bill and Senator Ensign's bill. It is essential that it be stated explicitly that the AVVPR is a record of the voter's vote.

We are concerned that the present language, which states merely that machines "produce an individual, permanent, VVPR for each elector casting a vote," is open to wide interpretation, including interpretations that would subvert the intent of the VVPR.

2) **The voter must be allowed to correct erroneous AVVPRs.** Nowhere does the language in section (d) state what will happen if upon the voter's verification the AVVPR does not reflect the voter's intent. The present language states merely that "(B) [the VVPR] be made available for inspection and verification by the elector prior to the elector casting the elector's official vote on the voting machine."

We are concerned that the present language is vague. It should state explicitly that in the case of some kind of verification error, the voter will be given the opportunity to correct the error by voiding the erroneous ballot and casting a corrected ballot.

Moreover, we are somewhat concerned that the language in this section appears to imply that the "official vote" is other than the AVVPR. As we noted above, because the AVVPR records the voter's intent, it should receive precedence as the ballot of record over the electronic ballot. We believe the word "official" should be dropped from this phrase. Instead, we would like to see language here that spells out explicitly what counts as the official ballot and what 'casting the vote' means when referring to electronic voting machines with AVVPRs.

3) **How will AVVPR's be preserved.** The language in the amendment states merely that the "[VVPR] be preserved in the same manner in which other election materials are preserved after the election." We believe the bill would be improved if the language in this clause was made more explicit.

## **B. Section (e) Concerning the Manual Recount.**

Section (e1) states in part, [a]fter every election or primary in which any electronic voting machine is used, including any electronic voting machine or device approved for use in this state prior to January 1, 2006, the registrars of voters shall conduct a manual audit of the votes as recorded on at least one electronic voting machine in each voting district. Such manual audit shall be completed by comparing the votes as recorded on the voting machine and any paper receipts produced by or as a result of votes cast on such voting machine. Such manual audit shall be completed within fourteen days after any election or primary. If such audit discloses a discrepancy that is likely to affect the outcome of the election or primary, the results of such audit may be used as prima facie evidence of such discrepancy in any contest relating to the election or primary pursuant to Chapter 149.

We are concerned with the vagueness of some of the provisions in this section.

1) **Random Selection of Machines to be Audited.** As we noted above, it is essential for assuring the integrity of the election, that the machines selected for audit be selected at random via a process that ensures that all machines have an equal chance of being selected for audit. By a 'random' selection we mean something akin to picking the machine's identification number out of a hat in full view of the public. The decision of which machines to be audited should be made according to a prescribed public process and not left to the discretion of an election official. Furthermore, this random selection process must not occur until after all of the initial machine-generated counts from all of the machines have been completed and the results from those counts released to the public.

2) **Auditing the Machine.** The language in this section requires that the audit be completed by comparing the votes as recorded on the machine with "any paper receipts produced by or as a result of votes cast on such voting machine."

The reference to "any paper receipts" is unacceptably vague. The only meaningful way to audit a machine is to compare the AVVPRs with the electronically recorded ballots. A "paper receipt" is not necessarily the same as the AVVPR. The AVVPR is the only paper record that the voter has had an opportunity to verify. Hence, this section should state explicitly that the AVVPRs must be used in a manual audit of an electronic voting machine.

3) **Publicly Observable Audit.** Nowhere does Section (e) mention that the audit process be observable to members of the public. Nor does it say that whoever conducts the audit must make any discrepancies known to the public. These are important elements of a properly conducted voting audit and should be included in the amendment.

4) **Handling Audit Discrepancies.** Section (e) states that "[i]f such audit discloses a discrepancy that is likely to affect the outcome of the election or primary, the results of such audit may be used as prima facie evidence of such discrepancy in any contest relating to the election or primary pursuant to Chapter 149."

We find the phrase "likely to affect the outcome of the election" to be troublesome here. Who would decide whether the discrepancy was likely to affect the outcome of the election? Equally important are the criteria used for making that determination. Those criteria should clearly assess the projected impact on the election if discrepancies comparable to the ones detected on the audited machines are assumed to have occurred in comparable proportions on all of the other (non-audited) machines used in that election. Both the criteria used and the results of applying those criteria should be disclosed to the public as part of the audit.

Either this language ("likely to affect the outcome of the election") should be clarified as indicated above, or this phrase should be eliminated altogether, so that all discrepancies found by these audits should be publicly-disclosed and available as "prima facie evidence of discrepancy".

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We believe that all discrepancies between the manual and the electronic vote are prima facie evidence that there is something wrong with the voting machine and should lead to mandatory additional recounts and public disclosure.

5) **AVVPR is the Vote of Record.** Moreover, this section must state explicitly that in the case of a discrepancy between the manual recount and the machine count for a particular machine, the AVVPR counts as the official ballot. As we pointed out above, the AVVPR is the only record that has been verified by the voter, which gives it precedence over the unverifiable electronic ballot.

We acknowledge that there might be situations in which compelling evidence emerges that the AVVPRs had been tampered with in some way. In such a case, of course, one would not necessarily be able to count the AVVPRs as the official ballots. However, except in such cases, the AVVPR should take precedence. Therefore, we would recommend that section (2) state explicitly that in the case of a discrepancy between the AVVPRs and the electronic ballots, the AVVPRs should be counted as the official ballots unless there is compelling evidence that the AVVPRs have somehow become damaged or compromised.

As we have said, we believe that the recommendations we have made here do not alter the intent of the provisions in the amendment, but seek merely to clarify and amplify the proposed language. We hope you agree and would therefore consider our suggestions as friendly amendments.

We would certainly welcome the opportunity to discuss these points with you and your staff at your earliest convenience. Again, we thank you for giving us the opportunity to have input into this most important process, and hope that through our combined efforts the state of Connecticut will soon pass a strong AVVPR bill.

Sincerely,

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