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SECRETARY OF STATE

SECRETARY OF STATE BUILDING
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Reported by: Michael Mac Iver
Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mr. Bruce McDannold, Chairperson

Mr. Steven Freeman

Mr. Michael Kanotz

Ms. Theresa Carroll

Mr. Casey Beyer

ALSO PRESENT

Ms. Cathy Ingram-Kelly

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1 PROCEEDINGS

2 CHAIRPERSON MCDANNOLD: Good morning. My name is
3 Bruce McDannold, I am the Interim Director of the new Office
4 of Voting Systems Technology Assessment here at the
5 Secretary of State's Office.

6 I would like to welcome all of you and thank you
7 for taking time out of I'm sure your busy schedules as we
8 approach the holiday season to be here on this occasion to
9 share your comments and your thoughts on the issue of the
10 day.

11 Before I begin, let me introduce the people you
12 see up here at the main table. On my far, far right is Mr.
13 Casey Beyer, he is the Chief Assistant Secretary of State.
14 To his immediate left is Theresa Carroll, she is the
15 Assistant Secretary of State for Legislative and Constituent
16 Affairs. Both members of our executive staff here at the
17 Secretary of State's office.

18 To my immediate right is Michael Kanotz, he is our
19 elections counsel. And then finally to my left is Mr.
20 Steven Freeman, he is our state technical consultant who
21 assists in certification testing of voting systems here at
22 the State of California.

23 I would like to point out that the Election Code
24 in California stipulates that the Secretary of State is the
25 person responsible for approving voting systems for use in

1 California. Secretary McPherson takes this responsibility
2 seriously and considers public input an important part of
3 that certification process, which is why you're all here
4 today.

5 Secretary McPherson, it's been very clear that
6 under his leadership only the highest quality and most
7 reliable systems will be certified for use in California
8 elections. He has taken several innovative steps to ensure
9 the accuracy, the security, and the useability of every
10 system.

11 In October of this year, Secretary McPherson
12 outlined his ten requirements for the approval of voting
13 systems, which include volume testing of all new systems to
14 ensure their reliability on election day. The deposit of
15 source code for all voting systems software here at the
16 Secretary of State's office with the right to perform
17 independent review. He's established for statewide use
18 procedures for every voting system. And finally, he's
19 mandated the formation of a user's group for each system so
20 that the users, the jurisdiction users, could have direct
21 input back to the vendor for ongoing improvement of voting
22 systems.

23 Secretary McPherson has created the first ever
24 Office of Voting System Technology Assessment to focus
25 exclusively on the issues around voting systems and to

1 oversee the certification process. One of the first
2 responsibilities of this new office is to design a new
3 testing and certification process that meets the challenges
4 of today's technologies.

5 Finally, Secretary McPherson has formed a multi-
6 state community to research the feasibility and the
7 challenges of using open source code software for voting
8 systems.

9 Today we are here to receive public comment
10 regarding the certification of the Diebold voting system for
11 use in California. Before we begin that, let me just take a
12 moment and outline the steps that have gone on before we
13 actually get to this point, what that certification process
14 is. It starts when the vendor submits an application which
15 includes thorough documentation of the system to the
16 Secretary of State's office. All components of the system
17 have the complete federal testing to the federal voting
18 system standards and the system must receive federal
19 qualification.

20 The Secretary of State's staff then, together with
21 our consultant, then conduct extensive testing on the system
22 to verify its ability to conduct elections in accordance
23 with California laws. A demonstration is held for the
24 volume tests as they are held where we take a large number
25 of the systems and put them in a situation to approximate

1 election day to verify the reliability in a more real-life
2 situation.

3 Then we hold a demonstration where we invite
4 members of the accessibility community, members of our
5 Technical Advisory Board, and county election officials to
6 come in and work with the system, review it, and give us
7 their feedback as part of the process.

8 Finally, we require the vendor to submit working
9 together in conjunction with the county election officials
10 to document the use procedures that are part of the security
11 of the system and to submit them where we post them on the
12 internet for public inspection and public comment.

13 The final step in this whole evaluation process,
14 in the certification process, is this hearing today. Each
15 one of you will be providing testimony here, and those who
16 are not here today will have an additional seven days to
17 submit written testimony.

18 We want to ensure you that Secretary McPherson
19 takes all this seriously and all of your input will be
20 provided to him.

21 To give you an overview of how the hearing will go
22 today and the process, I will first present the staff's
23 report from testing of the system. Mr. Freeman then will be
24 given the brief opportunity to summarize his findings from
25 testing the system, and we will ask the vendor then if the

1 vendor would like to make comments before the hearing.

2 As we posted and requested in our agenda, we have
3 several people who have asked for extended time to address
4 this body here today, and that's been granted, so we will
5 take those in turn. And then once they are completed, we
6 will open the hearing to your comments from the floor.

7 All those who would like to speak we are going to
8 ask to complete a speaker's request card. And the gentleman
9 who has those, if you didn't grab one as you came in the
10 door, he will be in and when he gets through signing people
11 in and we will ask him to circulate the room. We ask that
12 all of you complete that speaker's request card. Given the
13 number of people I'm anticipating who want to speak, we will
14 likely be limiting the time allowed for each person in
15 fairness.

16 I would like to introduce Cathy Ingram-Kelly over
17 there to my far right at the table. Cathy is going to be
18 our timekeeper today. She will be following and timing the
19 speakers, and as they approach the end, she will hold up a
20 sign giving the speakers a 30 second warning that their time
21 is about to expire, and then finally a sign when the time is
22 up.

23 To be fair to all the people who have come a long
24 way and want to speak today, we're going to ask that the
25 speaking be limited to those who have completed a card and

1 submitted it. We will not allow people to cede their time,
2 fill out a card and then cede it to someone else. That
3 opportunity was presented by calling or contacting us in
4 advance.

5 I would like to note that many people have come a
6 long ways today to present their comment, and for many
7 people it's a difficult thing to stand up in a room like
8 this and address a crowd like this. I'm going to ask that
9 while your opinion may differ from theirs, we ask that you
10 show to each speaker the same courtesy and respect that you
11 would expect when it's your turn up at the mike.

12 Finally, I would like to point out that we have a
13 court stenographer here who will be taking the full
14 transcript of the hearing today, and I want to point out
15 that your comments, if you choose to speak, and your name
16 will be part of that transcript and part of the public
17 record. It will be posted on the internet.

18 Finally, as I mentioned before, the period for
19 public comment is extended and will always be extended for
20 seven days from the date of the hearing. So those of you
21 who wish to submit a lengthier comment, you are free to
22 submit it today in written form or to submit it at any time
23 during the next seven days by the close of business next
24 Monday.

25 Okay. And if you have cellphones or pagers, can I

1 ask you to turn them off while you are inside the auditorium
2 for this hearing.

3 One other announcement. For those that are
4 interested in notification of future hearings, we have now
5 posted on our voting systems web page at the Secretary of
6 State's site, a link where you can sign up and receive
7 automatic e-mail notification as we would release it for any
8 future hearings. That can be found at our website at
9 WWW.SS.CA.GOV.

10 So the Diebold system we're going to hear today
11 and the subject of this hearing, we first received an
12 application for that system in June 2005. Due to a
13 modification that we will discuss further in the report,
14 that application was modified and resubmitted in September
15 of 2005 to incorporate a revised version of the TSX
16 firmware.

17 The components of this system are the following:
18 GEMS version 1.18.24 software. It's an election management
19 system and it can be used to define and configure an
20 election, design ballot layouts, program the AccuVote
21 optical scan DRE equipment, and finally at the conclusion of
22 the election tabulate and record election results.

23 The previously certified version of this software
24 was 1.18.19. It was certified in August 2004. Problems in
25 earlier versions of the software that could have prevented

1 casting provisional ballots under TSX DREs have been
2 resolved in this version. This version also includes
3 several minor bug fixes and enhancements, as well as
4 modification of features that actually aren't used here in
5 California.

6 The next component is the AccuView-TSX touchscreen
7 DRE, together with the AccuView printer module, and Ballot
8 Station firmware version 4.6.4. The AccuView-TSX is a
9 touchscreen DRE where voters record their choices by
10 touching the screen. Overvoting is prohibited on this
11 system. The AccuView printer module is a voter verified
12 paper trail that sits on top of the DRE, it's a reel-to-reel
13 device with a thermal printer and thermal paper. Standards
14 in the use procedure or standards of the paper that they
15 have used in the past, and it will be specified in the use
16 procedures, specify a grade of thermal paper that will hold
17 up far past the 22 months that's required by law. And, in
18 fact, we have researched earlier examples of this paper from
19 elections going back several years and verified that they
20 are still clear and legible today.

21 The system supports all seven languages that's
22 required in California. The system features audio voting
23 with a blank screen for the blind, as well as high contrast
24 and large font modes for the visually disabled.

25 While the TSX tablet can physically be removed

1 from its cradle and taken out to use for curbside voting,
2 unfortunately when it is removed in this manner, the paper
3 trail, the AVVPAT, does not go with it, so any votes
4 recorded on the tablet in a curbside voting mode would not
5 be recorded onto the paper trail. Therefore, it's not to be
6 used after January 1st in California in that manner for
7 curbside voting.

8 The next component is the Key Card Tool version
9 4.6.1. This is a software program that when used in
10 conjunction with a smart card reader can be used to set user
11 selected security keys for the smart cards used here in an
12 election. The previous version of this software, 1.0.1 was
13 last certified in August 2004. This version was rewritten
14 in the present application to meet the 2002 voting systems
15 standards and incorporates 128 bit security.

16 The next component is the Spyurus Voter Card
17 Encoder, version 1.3.2. This is a hand held device that is
18 used to program and configure the voter access smart cards.
19 These are the cards that when inserted by the voter tell the
20 TSX DRE what the ballot style is and the precinct and
21 activate the ballot for the voter.

22 Because each of these spyurus units is limited to
23 seven parties, two must be used in conjunction at any
24 polling place during a California Primary election. This
25 device and version was first certified on August 10th, 2004,

1 and is presented unchanged for use in the system.

2 The next component is VC Programmer version 4.6.1.
3 This is a software application that when used with an
4 external smart card reading device could be used to program
5 voter access cards for an election. It is ideally to be
6 used in early voting centers where a large number of
7 precinct and ballot styles must be supported. The software
8 was last certified in California as version 4.1.11 and has
9 been rewritten in this application to meet the 2002 voting
10 systems standards.

11 The next component is the AccuVote-OS optical scan
12 ballot reader, firmware version 1.96.6. This is a paper-
13 based optical scan ballot counter designed for use in the
14 polling place. It accommodates three different sizes of
15 paper ballots, all 8 1/2 with by lengths of either 11
16 inches, 14 inches or 18 inches. Ballots can be fed in any
17 orientation. The unit can be programmed to reject ballots
18 with overvotes. After the election, the vote results are
19 uploaded to GEMS either by modem or by transfer with a
20 memory card. The last certified version of this component
21 was version 1.96.4 in August 2004. It has been updated to
22 support the 2002 voting system standards as well.

23 The last component of the system is the AccuVote-
24 OS Central Count version 2.0.12 with the AccuFeed. This
25 version of the AccuVote is similar or almost identical to

1 the precinct version. It is configured with different
2 firmware, and when attached by a network cable to the GEMS
3 software can be used for central tabulation directly into
4 GEMS ballots. The AccuFeed is a mechanical device that sits
5 on top of the AccuVote and just automatically feeds ballots
6 in. The AccuVote-OS, this version or this component, was
7 first certified in September 2004 and is submitted unchanged
8 in this application.

9 I would like to note that all components of this
10 system have now been successfully tested to the 2002 federal
11 voting systems standards by Wylie Laboratories and Cyber
12 Incorporated. Copies of those testing reports have all been
13 received. The last was received subsequent to the release
14 of the staff report last week, so it's an update from the
15 staff report, if you have downloaded and read that.

16 The original system was qualified by NASED to the
17 2002 Voting Systems Standards and issued system number N-1-
18 06-22-22-001. Since that qualification, it was updated to
19 accommodate changes, as I mentioned earlier, to the DRE TSX
20 Ballot Station firmware version 4.6.4. While that version
21 has been tested to federal standards, we have not yet
22 received the qualification number on that revised system.
23 That will be required before the Secretary of State can
24 approve this voting system.

25 Our state testing of this system was conducted

1 originally under the Ballot Station firmware version 4.6.3
2 June 27th through June 30th here in Sacramento in this
3 office. When we experienced paper jams with the paper trail
4 on the DRE unit of the TSX, state testing of the system was
5 suspended and the vendor was asked to come forward when they
6 felt they had resolved that problem in a volume test, the
7 first volume test we believe ever in the country.

8 On July 20th, that volume test was held in San
9 Joaquin County in one of the warehouses for the elections
10 department. Ninety-six TSX machines equipped with the
11 AccuView printer module Voter Verified Paper Audit Trail
12 mechanism were used in that test. Over the course of a day,
13 over 10,000 ballots were cast on those machines. All ten
14 testers used were non-Diebold employees. During the course
15 of the day, we experienced 12 jams on the paper trail, 12
16 jams on 10 different machines. Six of those jams we noted
17 had the paper trail affected where the ballot image or the
18 ballot recording on the paper trail had been affected.

19 We also experienced 21 episodes of the screen or
20 the reading system freezing in one manner or another that
21 required the TSX to be rebooted. Details of that testing
22 are available online in the staff report, as well as we've
23 posted the report from the Secretary of State's Voting
24 Systems Technology Advisory Board. And you can download
25 that report as well.

1 While we were there in San Joaquin, we concluded
2 the normal State testing on that system from the 20th
3 through the 22nd. After reviewing the findings of that
4 volume test, the Secretary of State suspended testing and
5 certification of the system until the following that we
6 found had been resolved. On September 15th, Diebold
7 contacted us and reported that they had resolved the
8 problems with the screen freezes and made several
9 modifications to reduce severely the incidents of paper jams
10 that we experienced. A second volume reliability test was
11 held in San Diego on September 28th at the Lafayette Hotel.
12 During that test, we encountered no episodes of the screen
13 freezes. While we did encounter three episodes of a paper
14 jam, the machine recovered gracefully from all those
15 episodes and we were able to verify that no ballot records
16 had been lost from the paper trail.

17 Details of that test are all available online.
18 And we have posted all the error reports taken, the summary
19 or the appendix to the state's staff report, listed
20 protocols used for the test, as well as a chart summarizing
21 the results.

22 I should note that 19 of the errors that we did
23 experience and reported on were human errors not related at
24 all to the equipment. Cards were inserted upside down, the
25 testers inadvertently reinserted a card that had already

1 been voted on, items of that nature.

2 The following two days in San Diego we performed
3 regression testing on the system to verify that the new
4 version of the TSX's firmware integrates successfully with
5 the rest of the Diebold system.

6 Finally, we had an open house demonstration for
7 the accessibility community, as I mentioned, members of the
8 Technical Advisory Assessment Board and election officials
9 here in the Secretary of State's office. Comments were
10 generally favorable on the system, although there were some
11 concerns expressed with the accessibility features, which I
12 will note in a moment.

13 In terms of compliance with existing law, HAVA
14 requires that voting systems after January 1, 2006, provide
15 some kind of a warning to voters to prevent overvoting.
16 Both the TSX and the Optical Scan AccuVote-OS systems
17 provide those features.

18 HAVA also requires after the first of the year
19 that all voting systems or that every voting system used in
20 a precinct has to have at least one machine that provides
21 accessibility for people with disabilities. The AccuVote-
22 TSX is aimed at meeting that requirement. It features for
23 the blind an audio-only mode with a blank screen. It also
24 has low visibility features, either the high contrast screen
25 or enlarged fonts. I should note that while it does not

1 have sip-and-puff capability currently, the vendor has
2 suggested the possibility of using a stylus or a mouth
3 pointing device to activate it.

4 And finally, as I noted before, it has a
5 limitation, so it cannot be used or it cannot have the
6 tablet removed from the cradle and taken out for curbside
7 voting. And if someone wanted to do curbside voting with
8 the system, the whole unit would need to be taken out with
9 the complete cradle taken out to a car.

10 Finally, California has a requirement for a Voter
11 Verified Paper Audit Trail for all DRE voting systems
12 effective January 1 this coming year. The AccuVote-TSX
13 appears to meet this requirement and the AccuView printer
14 module is a voter verified paper trail. It should be noted
15 that because it's a paper trail, there is no way for a blind
16 person to actually read that paper trail and read their vote
17 results and verify their ballot, while they can hear the
18 audio verification in the summary of the AccuVote-TSX
19 device. Previously, the Voting Systems and Procedures Panel
20 in February or March of this year just ruled that that is
21 acceptable for meeting the paper trail requirement and it is
22 consistent with the Sequoia paper trail device that is
23 already certified and in use in California.

24 The staff has recommended certification of this
25 system subject to the following: It must receive the final

1 qualification of the amended system from the federal
2 authorities, the use procedures will need to be finalized
3 before the system can be used, and finally the vendor will
4 be required to submit the source code to the Secretary of
5 State, as well as verifying the source code deposit with an
6 approved escrow facility here in California.

7 Thank you.

8 At this point I would like to again introduce Mr.
9 Steve Freeman who will provide brief remarks on the testing
10 he performed.

11 MR. FREEMAN: Mr. McDannold gave a pretty good
12 presentation of most of the features of the system that we
13 took a look at. I just wanted to mention a few things about
14 some of the actual test procedures and some of the items we
15 went through and some of the points in which we recognized
16 that there may need to be a change or be addressed in terms
17 of the use procedures.

18 The big thing, of course, with this one is the
19 introduction of the voter paper audit trail mechanism. At
20 the start of the process, the initial testing, we ran into
21 significant problems with it as he reported, they came back
22 and we did retest and retest. We're mainly looking at the
23 issues in terms of the reliability and the accuracy of its
24 recording.

25 By the time we got through with this, we're fairly

1 confident that this represents a good representation of what
2 the voters actually had done. There was no cases we could
3 find or identify going through a variety of different
4 logical paths where the reports on the voter verified paper
5 audit trail did not support what the voter had done.

6 The only outstanding problem that showed up was
7 the issue about possible paper jams and the potential for
8 the paper jam itself damaging the ballot or the paper image
9 in the record so that it could not be read. And as Bruce
10 indicated, in the final test that we did under the volume
11 testing, even though there was some cases where there was
12 some paper jams, the system was robust in terms of being
13 able to prevent the loss of those records.

14 In addition to the issues about the paper jams, we
15 also were looking at other functions and changes, due to
16 some of the changes that were done for compliance with
17 California as well as some changes done from other states,
18 that do not directly affect California, but we're concerned
19 about an issue where those types of changes would result in
20 some sort of defect on some portion of the program that
21 previously worked okay and satisfactorily.

22 We went through a full test election using a test
23 election that we created we're trying to standardize for all
24 of the vendors. It's based on the San Diego election.
25 We've taken their election and culled it down to fewer

1 precincts to make it manageable for the testing and the
2 operation of the test, which include all options we could
3 find within the current California law and voting logic for
4 the actual elections, involving everything from the
5 variations between the district coverages and the effect in
6 terms of rotation on the presentation of the ballots, the
7 addition of the particular rules and practices involving the
8 primary. We did decline-to-state type of options for the
9 political parties, also working the issues in terms of
10 provisional ballots, working with write-ins and
11 reconciliation for those.

12 There was some additional testing in terms of the
13 audio ballot in terms of the multiple languages. Part of
14 that test involves going through and actually going through
15 all three samples of language. We don't test for all seven,
16 but we do test for English, Spanish, and one other language
17 from what I call the graphic set, those represent the
18 character sets that are not necessarily recognized by the
19 screen, character substitutions occur with many of the
20 Western European languages.

21 In this particular case, we did testing with
22 Vietnamese initially and it was drawn to our attention that
23 that perhaps wasn't as challenging, so we switched over to
24 doing the testing in Chinese. The federal testers actually
25 test all seven languages and basically what we're doing with

1 that is just trying to follow through and make sure that the
2 introduction of the California particular rules for running
3 the elections doesn't run a foul of those.

4 We go through the process of actually listening
5 and using the audio ballot in all those languages, as we
6 process and do the testing against those particular ones, we
7 pay particular attention in terms of the navigation through
8 the choices for the voters and make sure that the audio
9 voter has a chance to access every candidate, every race,
10 and go back and make changes and make corrections and have a
11 chance to review the ballots.

12 One of the problems that existed in the prior
13 version had to do with provisional balloting. The DRE
14 supports the ability to be able to do a provisional ballot
15 on the system, however, in an earlier testing on an earlier
16 version, when we tried to do reconciliation on that, there
17 were some problems with issues that didn't meet the
18 California rules. The changes with the 1.18.24 has provided
19 support for that, so there may be a chance to go ahead and
20 use the system in terms of provisional balloting that allows
21 the ballots to be submitted, held separate, until it can be
22 verified and validated, to go through the validation process
23 on provisional ballots in those cases where the ballot has
24 been submitted in a precinct other than the one that the
25 voter was authorized to vote for. There is a capability to

1 go ahead once the ballot has been identified as being voted
2 by an actual legitimate voter and approved and validated on
3 that level to print out the ballot so it can be copied into
4 a precinct level ballot paper form, and matches those
5 contests and measures that are the right of that voter to
6 participate in.

7 One other thing that we did within this particular
8 test in conjunction with the legal suit that was part of the
9 settlement on that had to do with establishing some
10 additional procedures and support for being able to support
11 the most secure operating system environment. A potential
12 vulnerability on one of these election systems actually
13 occurs when taken advantage of some holes in terms of like
14 the Windows operating system. And one of the things we're
15 moving towards is being able to impose a more secure Windows
16 operating system environment follow Microsoft's own guidance
17 and the best practices for securing, as well as some
18 guidance that's being developed in cooperation for secure
19 operation of Windows.

20 In this particular case, Diebold has worked with
21 us to establish how to shut down much of the Windows
22 operating system to get rid of those features and accesses
23 that are potential vulnerabilities and limiting to those
24 that are just required by the Diebold system and GEMS. Part
25 of the problem that we've had in the past with that is when

1 we've gone to the testing environments is that if you shut
2 your Windows operating system down to that level, it turns
3 out that the particular election management system may not
4 necessarily function and we have to back out of it and end
5 up with the local county and jurisdiction using the system
6 ends up not using some of the features that should be
7 available to them.

8 In this particular case, the assessment of the
9 changes that they provided in terms of shutting down
10 unneeded or undesirable services was fairly successful.
11 There was a couple of items but it does provide a much more
12 secure environment throughout the operation and shuts down
13 some possible threshold threats. That's not to say that
14 there isn't more work to be done, but this is a whole new
15 approach in terms of providing a more secure environment.

16 We also did testing with the VC Programmer and the
17 Key Card Tool. Bruce had mentioned some of the increased
18 security in terms of larger encryption keys and stronger PIN
19 codes. There's also some additions to some other features
20 on this, including a security log to VC Programmer so that
21 we know what's going on to make sure that this unit being
22 used with access cards would be accountable for those.

23 There's several places we recognized that there
24 needs to be perhaps some additional procedures or at least
25 go ahead and continue some of the current use procedures in

1 terms of access and the performance of the equipment. We're
2 doing some checking in terms of the initial set up and
3 testing before an election to make sure that the correct
4 versions are loaded, storing the zero tolerable reports at
5 the start of the election and the summary audit reports at
6 the end in the AVVPAT, the paper audit trail canister,
7 security canister, to make a complete record, making sure
8 that there are seals that lock out access to make sure that
9 anything that's installed in the program can't be moved or
10 replaced during the operation of the election, or at least
11 if it is, that there is visible evidence that that has
12 occurred.

13 One of the issues that came up earlier was a
14 provision for a bar code on the paper trails. This is
15 intended to make it easier to perform mechanical count
16 against those paper trails. Unfortunately, under the
17 California Code, those bar codes constitute providing a
18 unique symbol or marker that could be used to identify the
19 ballots. And we requested that they turn that off so that
20 that wasn't available on the actual paper trails so that you
21 aren't able to identify that particular ballot was voted by
22 that particular voter, which gets into the secrecy of the
23 vote, an important right that we have in this country. We
24 did provide that they turn it off. We're going to have to
25 make sure we use these manual procedures to ensure that

1 those bar codes are turned off.

2 There was the addition of a new administrator's
3 card that is used to go ahead and set up the access and
4 encryption keys on the different components. In former
5 versions of this in which it was a single card which was
6 called a supervisor's card, that was available to all of the
7 poll workers. Of course, this causes potential problems in
8 terms of restriction of access and they had an additional
9 card, an administrator's card, which is used to be able to
10 control access rights and some of the issues in terms of
11 setting and adjusting the keys, with the supervisor's card
12 being reduced in the scope of operations of that which needs
13 to be available to the pollworkers themselves.

14 Now, another test that we got into and involved
15 with working with the touchscreens, there is sometimes a
16 problem with the touchscreens where if the screen is touched
17 in multiple locations that you can go ahead and you can get
18 a false selection. We then tested against this, there is no
19 standard criteria for acceptance or failure if this problem
20 occurs, but basically we're using the basis of saying if you
21 touch it in the critical position, that voter's choice
22 should be the one that's made.

23 In this particular case, one of the things that
24 was discovered that one of the problems that we were having
25 with the touchscreens was a voter sliding a finger across

1 the screen at the correct location the correct choice was
2 being made at that point, but this was a source of some of
3 the blue screen errors that we had.

4 Again, I want to reiterate the point that in spite
5 of what the error was, it did not result in a loss of the
6 accuracy or the correct recording of what the voter's choice
7 was and the appropriate indication in terms of the paper
8 audit trail, as well as the electronic image of the actual
9 ballot record.

10 Finally, one of the issues that came up was one
11 that has to do with something called the basic files. These
12 are a set of files that are used to customize the operation
13 for different local jurisdictions' requirements or state
14 jurisdictions' requirements going across the country. This
15 particular set of files was again set up in advance and
16 coded and provided within the GEMS environment. But we
17 discovered that in the federal testing that this was not
18 going through a source code review and we requested and
19 obtained a source code copy restricting it to a single file
20 that is authorized for use in California, and if we wanted
21 to perform a source code edit on that particular file to
22 determine if there was any particular risk or problems with
23 it.

24 And that basically covers what I have to say on
25 this.

1 CHAIRPERSON MCDANNOLD: Jason, if you can wave
2 your hand, before I bring the vendor up, once again those
3 who wish to speak during the general public comments will
4 need to complete a speaker's request card. If you need a
5 card, please raise your hand now and Jason will be happy to
6 pass them out. If you have a completed one, you can pass
7 them down towards the end of the aisle and Jason will be
8 happy to collect those and bring them up.

9 I would like to ask the vendor or a representative
10 from the vendor to come forward.

11 And immediately following the vendor will be Jim
12 Soper. So if Jim could be prepared.

13 MR. SINGLETON: Good morning, my name is Marvin
14 Singleton for Diebold Election Systems.

15 We are here today to provide public input as part
16 of the application for this hearing. As the report stated,
17 as Mr. McDannold stated, the Elections Division staff does
18 recommend the application be certified.

19 What I would like to add, in other jurisdictions,
20 as recently as November 8th, this was used in this
21 configuration in Ohio and in Utah. Quote, "It was a great
22 day for Ohio voters where more than 15,000 new voting
23 systems were used by nearly one million voters today and we
24 were overwhelmed with positive reports." That is by the
25 Ohio Secretary of State Ken Blackwell --

1 (Boos.)

2 CHAIRPERSON MCDANNOLD: Ladies and Gentlemen,
3 please, as we've asked before, can you please show even
4 those who you may disagree with the same courtesy and
5 respect that you will get and expect when it's your turn.
6 Thank you.

7 MR. SINGLETON: So that was the quote by the Ohio
8 Secretary of State. And in Utah, the state's second largest
9 newspaper, Utah had similar success using the AccuVote-TSX,
10 "Computerized voting is a solid winner."

11 So, for the record, in addition to what the
12 reports did say and what you previously said with the
13 State's external consultant, Diebold Election Systems would
14 like to add those two comments in the record.

15 Thank you.

16 CHAIRPERSON MCDANNOLD: Thank you, Mr. Singleton.

17 Okay, Mr. Soper.

18 Following Mr. Soper will be Mark Greenberg.

19 Mr. Soper has asked for ten minutes and has been
20 granted ten minutes.

21 MR. SOPER: Good morning, my name is Jim Soper. I
22 am a programmer with more than 22 years or 20 years of
23 experience and among other things a former senior consultant
24 with Digital Equipment Corporation.

25 I would like to start out my comments by

1 mentioning a few principles. Throughout the state law when
2 you read it, there is the general principle that the
3 elections must be open and verifiable, the whole procedure,
4 everything needs to be open and verifiable from beginning to
5 end. That's the first principle.

6 Then Section 19205 says that, one, the machine or
7 device and its software shall be suitable for the purpose
8 for which it is intended. And Point C says that the system
9 shall be safe from fraud or manipulation. And I think what
10 we've both heard today is that this system is neither safe
11 from fraud or manipulation nor suitable, at least parts of
12 it, for the purpose for which it is intended.

13 If I read properly Mr. Freeman's report, on page 5
14 it talks about HAVA compliance, and as I understand that,
15 it's not HAVA compliant, because there is just a lot of
16 deficiencies with the whole system. And I'm not going to go
17 into detail about that, but that just struck me as not being
18 particularly HAVA compliant, if I understand that system
19 right.

20 I would like to take a look at the professionalism
21 or the work of Diebold and note that they used the same
22 encryption code which is sort of like a PIN number for seven
23 years at least. It was hard coded in there. That number is
24 8F2654HD4. And seven years and it's hard coded and used in
25 every machine in the country.

1 They also had hard coded the number 1111, four
2 ones, as the password on the administrative cards.
3 Apparently that's been corrected, but I'm not going to talk
4 to that.

5 They used Microsoft Access to run their database.
6 When I talk about voting machines and I mention that several
7 companies use Microsoft Access as their database and I say
8 that to professionals, I get giggles every time, because
9 it's not a professional database.

10 They use BASIC, ACUBASIC, in the cards for the
11 scanners. BASIC is a programming language, and it makes it
12 real easy for somebody to, if they swap the cards, put in
13 another program in there and the scanner is going to read
14 that card, and read the BASIC and execute it. And if it's
15 done right, and Harri Hursi has shown that this can be done,
16 if it's done right, you've got a program in there that can
17 do lots of different things, including change the printout
18 of the ballots or potentially insert it with a virus, what
19 most layman people would call a virus. And that can be
20 spread out through the whole system and go back from the
21 scanner all the way back to the central tabulator, and
22 that's dangerous.

23 Diebold left the source code on the internet. We
24 have provided open source. A group of security specialists
25 read the source code and their final summary here as to this

1 voting system is far below even the most minimal security
2 standards. This system is not well designed, it is sloppy.
3 If you want a good example of a design, go to OpenVoting.org
4 and read their paper about design. That is good design.

5 I worked in the Zurich headquarters of the Swiss
6 Bank and I have seen the difference between what Diebold
7 does and what a Swiss will use. Swiss Bank does it by the
8 book, and they would not make these fundamental security
9 errors. It just would have been excluded.

10 Let's take another look at the culture of the
11 company. We've already talked about the culture that
12 produced sloppy work. We have Global Elections Systems
13 founded by three crooks. They hired several more crooks,
14 Mr. Dean and Mr. Elder, and what is most distressing about
15 this is not just that the embezzler's code is still in the
16 machine, it's that Diebold didn't care. They continue to
17 work for this -- they bought the company, they bought Global
18 Elections Systems, and with all the baggage that came with
19 it, they didn't care. And that's not good. And they still
20 don't care.

21 In April of 2003 they were decertified for lying
22 to the State of California, and that's in the Secretary of
23 State's proclamation when he decertified them. He said they
24 were liars and misrepresented things, and they can't
25 continue.

1 This year they continue to stonewall. In Alameda
2 County they said it's going to cost two million and a
3 million dollars to put in rank choice voting in the system,
4 when they are telling San Diego at the same time that it's
5 no problem.

6 This year Diebold is fighting now a new law in
7 North Carolina that says that you have to put the source
8 code into escrow. They are fighting that in court. This is
9 a normal thing to ask for and they are so scared of it that
10 they are fighting it in court. And in August they sent an
11 e-mail to the Platt County Elections Committee about the
12 BASIC saying it wasn't executable code. I'm sorry, it is
13 executable code. We have them again in August lying.

14 There is a pattern here, and the pattern
15 represents a corporate culture. And you can go fix some of
16 the bugs in the source code, but you can't fix the corporate
17 culture that easily and it's still there.

18 I kind of miss a time when we had more integrity
19 in our companies. And there used to be a time when
20 accounting firms had high integrity. We need that high
21 integrity, we've got to have it in these machines. These
22 machines are being audited, but we can't count on that,
23 we've got to have that integrity and it's not there with
24 Diebold.

25 Another point. SB-370, which said since you're

1 going to have an audit trail on the machines, you've got to
2 use them. Well, why they had to pass a law to make sure
3 that happens, I don't know, but they had to. And the
4 Secretary of State and county elections officials said that
5 they were opposed to this, and they were opposed to it
6 because it's hard to use for the voter, and, in effect, they
7 were right. It's hard to use for the voters and it's hard
8 to use in an audit recount. This is in effect to say that
9 the printer is not suitable for its intended purpose, which
10 the state law requires. And if it's not suitable and now
11 we've got the Secretary of State and county elections
12 officials saying this is not suitable, the state law says if
13 it's not suitable, you must not certify it, period.

14 (Applause.)

15 MS. INGRAM-KELLY: Time is up.

16 MR. SOPER: Just to finish up here, I'm a software
17 engineer --

18 CHAIRPERSON MCDANNOLD: Mr. Soper, thank you.

19 MR. SOPER: Can I have one minute?

20 CHAIRPERSON MCDANNOLD: I think we have a lot of
21 people to get through, thank you, that's why we gave the
22 warning.

23 (Applause.)

24 MR. SOPER: Thank you.

25 CHAIRPERSON MCDANNOLD: Mr. Mark Greenberg,

1 please.

2 Following Mr. Mark Greenberg will be Jerry
3 Berkman.

4 Mr. Berkman, if you could move closer to the
5 podium so that you're ready to speak.

6 Is there a Mark Greenberg here?

7 Okay, then Jerry Berkman then will speak next.
8 Following him will be Jim March.

9 So Mr. March, if you could move towards the podium
10 and be prepared.

11 Mr. Berkman has asked for ten minutes and will be
12 granted ten minutes.

13 MR. BERKMAN: Hi, I'm Jerry Berkman. I have a
14 long statement, but I'm not going to read it all. For those
15 who want to see the rest of it, it's on the web at
16 [HTTP://Electiondeskreform.us](http://Electiondeskreform.us).

17 Okay. I'm going to skip around the statement.
18 The Diebold system has lots of violations of the Elections
19 Code. There's a bunch of security problems and 19205
20 requires the system be safe from fraud and manipulation.
21 By this system, I'm going to talk about one and Jim March
22 I'm sure will talk about them too.

23 The TSX and optical scan units use removable
24 memory cards for electronic ballot boxes. These memory
25 cards contain executable code. The code on the memory cards

1 is executed without being tested to see if it is malicious.
2 This is a huge security hole. Anyone with access to memory
3 cards can alter the results of the election. In addition,
4 removable memory cards used for the voters' marked cards, we
5 cannot know if these contain codes to be executed.

6 From the point of view of security, the first
7 thing you always have to do is make sure you don't execute
8 somebody else's code or that they somehow change your code.
9 These smart cards and the electronic ballot boxes, these
10 multiple memory units, which are very small, there's no
11 reason to have executable code on them. You have to
12 identify the precinct the voter is in when they vote and the
13 precinct the results are for, and that could just be a
14 number. You don't have to have executable code. To have
15 executable code on these cards which thousands of election
16 workers are handling, and there's also code on the smart
17 cards that hundreds or millions would be handling is just an
18 invitation to a disaster.

19 On the AVVPAT, Accessible Voter Verified Paper
20 Audit Trail, it prints with a small type. Previously it had
21 a magnifying glass to aid disability. It no longer does
22 because the magnifying glass wasn't working quite right. So
23 rather than fix the problem, as I understand it, Diebold has
24 just discarded that. And this makes it a problem for people
25 with limited vision, violating Sections 19250 and 19251 of

1 the Elections Code.

2 In the September volume test, there were seven
3 AVVPAT problems. Given the limited training of poll
4 workers, it's unreasonable to expect them to diagnose and
5 fix AVVPAT problems. Three of those were paper jams, two
6 more were false low paper warnings, and two more were about
7 the spacing of the type on the paper. Now, obviously, you
8 know, paper jams, that's what everybody is talking about,
9 but what about the low paper warning. In those tests, the
10 way it works, somebody had to come over, open up the
11 canister, and see that there was a lot of paper there and
12 then close it and somehow restart and have the voting
13 continue. That is not something I want the pollworkers to
14 do for two reasons. One is they don't have enough time to
15 get trained, and second, when they open up that canister and
16 look in to see how much paper there is, they are going to
17 see other people's votes.

18 Also there was this question of spacing and I have
19 trouble understanding it, but I guess the idea is that there
20 was too much spacing between the lines, so that which was
21 supposed to be visible on the printer was not all visible.
22 And I don't know what a voter would do if that happens to
23 them. Would they say come over here and look at this, and
24 you would have to look at their vote to see that it wasn't
25 all displayed before they could verify it. There was seven

1 problems in that one in the second volume test and that is
2 too much.

3 I went to my bank, I asked them how often do their
4 ATM printers have problems. They said almost never. And I
5 said maybe once a month? They said, oh, no, much less than
6 that. So why is the Diebold AVVPAT so flaky, the printer.
7 This makes the TSX unsuitable and violates Section 19205 of
8 the Elections Code.

9 Accessibility issues. First, there is no sip-and-
10 puff capability. Second, there is no way for the blind to
11 verify their vote on the AVVPAT. In other words, in order
12 to verify the voter verified paper audit trail, the blind
13 have to be able to read the print. That doesn't work, they
14 can't read. There are some systems for voting where they
15 read back the verification phase as they read back what's on
16 the paper, this does not. And so that violates the Election
17 Code. And the AVVPAT printer is too small to be read by
18 people with limited vision which violates the code.

19 As to suitability, I think it's interesting that
20 in the San Jose Mercury News on September 9th, Secretary of
21 State McPherson wrote that AVVPATs, quote, "Might not retain
22 their quality during the often lengthy recount and legal
23 challenge periods." End quote. The Diebold AVVPAT is the
24 flimsiest of the AVVPATs I have seen. It's narrower and on
25 the thermal paper fairly flimsy. It's definitely not

1 suitable and the Election Code requires suitability.

2 Diebold has had a lot of problems, they are
3 unwilling to fix problems until forced to. In fact, one is
4 the vulnerability of the central tabulator database is
5 publicly disclosed in September of 2004 and has not yet been
6 fixed. Not only that, they didn't tell their customers
7 about it, so they couldn't check for it to see if elections
8 were being hacked in the November 2004 election.

9 In the last election, there were tons of problems
10 in Maryland, among them 106 screen freezes. They didn't fix
11 that, that's in November, they came to California in June
12 and it wasn't fixed. Only when Secretary of State McPherson
13 says we can't certify this because of all these screen
14 freezes, then they went back and fixed it.

15 There was a problem with a magnifying glass of the
16 AVVPAT. Rather than fixing it, they removed it. So if you
17 can't read, that's up to your local official.

18 The problems of paper jams in the AVVPAT were
19 present in Mr. Freeman's testing March 28th to April 1st.
20 They were still present on the July 20th volume test. Only
21 when we said we won't certify it did they actually go back
22 and try to fix it and reduce the number. They didn't really
23 fix it totally, they just reduced it. They have a poor
24 track record, do not trust them.

25 Another is after they got caught with uncertified

1 code here, they apologized and promised to do better and
2 then they did the same thing in Maryland.

3 Okay, some new points. And these actually apply
4 not only to Diebold, but other certifications. Maybe only
5 Diebold, but I don't know that.

6 Diebold treats data and databases as proprietary,
7 thus election officials are not supposed to make copies of
8 databases and files containing ballots, ballot images, vote
9 summaries, ballot style definitions, et cetera. This is
10 ridiculous. I can understand why a company wants to keep
11 their source code proprietary, but I cannot see why cards
12 containing our votes cast on a Diebold Voting Systems should
13 be subject to any Diebold usage restrictions. Examples of
14 use include creating checkpoints during the night so you can
15 see if there is some real funny jump in the votes, analyzing
16 data with several independent programs.

17 Certification of the Diebold TSX or any other
18 voting system should include the condition that voting and
19 election data created for and during California elections
20 will not be restricted due to proprietary claims by the
21 vendor. These are our votes, they don't become property and
22 subject to vendor restrictions just because we use their
23 machine, that's ridiculous.

24 (Applause.)

25 MR. BERKMAN: Section 10103 states that the

1 Secretary of State determines what is put in an escrow and
2 then, quote, "The Secretary of State shall have reasonable
3 access to the materials placed in escrow ... in order to
4 verify that the software on a voting system, machine, or
5 voting tabulating device is identical to the approved
6 version." I'm not aware if we have ever done that, we've
7 never checked. We need to do that to verify the integrity
8 of our elections. Computer security experts know that there
9 are often unintended side effects from changes, apparently
10 unconnected bonds, and thus any of the software may
11 influence the tallying. So all software should be put in
12 escrow, and this should be a requirement that we be able
13 without any vendor restrictions to take this --

14 MS. INGRAM-KELLY: Time.

15 CHAIRPERSON MCDANNOLD: Thank you, Mr. Berkman.

16 MR. BERKMAN: Take this and verify it, compile it
17 and verify it.

18 (Applause.)

19 CHAIRPERSON MCDANNOLD: Following Mr. March, will
20 be Bin Reis-Knight. Is Mr. Reis-Knight present? Okay, if I
21 could get you to move up closer to the podium, please.

22 MR. MARCH: Thank you very much. My name is Jim
23 March.

24 Actually, the next person who is going to testify
25 is Mr. Mark Radke, by sound file taken on October 17th,

1 2005, in Cuyahoga County, Ohio. Mr. Radke was testifying in
2 response to a question by Bev Harris, do the memory cards on
3 a Diebold system, either optical scan or touchscreen, by a
4 memory card, I mean the ballot box that contains the record
5 of the vote, does it also contain executable program code.
6 And this is what Mr. Radke had to say.

7 (Thereupon the sound file was played.)

8 MR. MARCH: And I think that's about all we need
9 to see of that, all though you're going to see the full
10 video, it's about a three and a half, four minute exchange
11 between Bev Harris and Mr. Radke in which he says there is
12 no executable program on the memory card. Now, Mr.
13 Freeman's report says otherwise.

14 Am I correct in that, Mr. Freeman, you found
15 executable program written in ACUBASIC sitting on those
16 memory cards?

17 MR. FREEMAN: I'm advised I shouldn't answer that.

18 (Boos.)

19 MR. MARCH: That's fine. That's fine. Because
20 your report may say otherwise, okay.

21 That seems to be a discrepancy --

22 CHAIRPERSON MCDANNOLD: Mr. March, the point of
23 the hearing is to solicit your public comment today, not to
24 engage in debate.

25 MR. MARCH: Okay. All right. Not a problem.

1 Well, let's talk about another ethical problem. I
2 would like to thank Mr Freeman in his report for reminding
3 me about the case Bev Harris and I won. If it's not clear
4 to everybody, the superior court case with some code
5 numbers, I don't remember them, it starts with an R or
6 something, that Mr. Freeman cited is the court case that Bev
7 Harris and I were involved in starting in Alameda County.
8 Now, that court case put stays and restrictions on Diebold.
9 They were court-mandated and the court retained jurisdiction
10 of the case through the end of 2006 through those elections.
11 Two restrictions, in particular, I find interesting. One of
12 them is that you don't connect a Diebold file server, a
13 Diebold GEMS server, to the internet. Well, that's awful
14 funny because I saw that done in San Diego. And I heard a
15 description of that by Mr. West, the Chief Technical Officer
16 for San Diego County election officials. Diebold was
17 involved in making that connection. They are in violation
18 of court order.

19 Today, in addition to submitting a copy of our
20 letter to the Attorney General's Office, we submitted a
21 letter to the Attorney General's Office with my declaration
22 complaining to them about this violation of the court order
23 and one other interesting violation. The court order also
24 says that forthwith Diebold shall strip from the Windows
25 operating system of the GEMS server extraneous networking

1 components used to connect to the internet.

2 Well, in San Joaquin County, we had a software
3 inventory of what was sitting on the GEMS server currently
4 in use in San Joaquin County. We printed out a series of
5 files which are in the attachment to my declaration, which
6 is also on this CD, and those file listings show that as far
7 as I can tell, and I've done some research on this, you need
8 to confirm this if you like, the Attorney General's Office
9 could do likewise, they didn't strip squat regarding
10 internet connectivity, networking components, or anything
11 else of that nature. That software was running, present, in
12 San Diego when I checked on November 5th.

13 There is another factor we need to talk about
14 regarding access and regarding system security, because
15 that's what this discussion is about, system security. Part
16 of system security is public oversight. Diebold has fought
17 against public oversight at every possible turn. They have
18 fought against paper trails and now they are on record as
19 saying that the data files containing our vote and the data
20 extension GDF or MVB, Microsoft Access database or GEMS
21 backup file, are a proprietary trade secret, not the data
22 itself, but the layout of the data, and therefore the raw
23 data files which can be forensically taken apart to
24 determine cheating in some cases. They are saying they
25 claim trade secrets on those.

1 Well, that's awful surprising to me because my
2 website has been publishing copies of various Diebold GDF
3 and MVB files that we have collected from various sources,
4 some of them on Diebold's own website, some of them
5 elsewhere. We have at Blackbox Voting has at least one from
6 a public records request, what is it, Florida, Bev?
7 Florida. So we've got some of these files and we are making
8 them available on the internet. Now, if you want to look at
9 Diebold's trade secrets, all you need is one of those files.
10 You know, it's not necessary to go to county after county
11 after county to get more of them, because any one of them
12 shows you right out. So it's not about trade secrets.

13 When they say those files aren't available for
14 trade secrets, only one of two possible things is going on.
15 Either Diebold is cheating on our vote and doesn't want us
16 to see the evidence, or Diebold is maintaining this trade
17 secrecy ruse at the request of some of the county election
18 officials who are against public transparency for reasons I
19 will not speculate. But we have seen a lack of commitment
20 to public transparency amongst some of the election
21 officials. Some of them are running Diebold, some are
22 running other systems.

23 What this gets to, what I'm leading up to, is
24 there is something very nasty buried in the Diebold proposed
25 certification procedure for use in the current

1 certification. The nasty part is they want to pull the CD
2 burners out of the machines. The list of hardware on the
3 GEMS server which so far is the only list of what hardware
4 they want to supply to the GEMS box that I have ever seen.
5 They have never been clear about that on any prior
6 certification which, okay, fine, they are being sued about
7 the hardware. The hardware list does not include CD ROM
8 burner.

9 Now, they know that the more somebody takes any of
10 these counties to court on we want access to the GVF files
11 under California Public Records Act and the new Prop 59
12 modifications to the California Constitution specifying a
13 public right to open records, we're going to beat them on
14 that, like, what's the word, a redheaded stepchild. But if
15 the CD burner drives are not present in the machines, it
16 will be much more difficult to get the data files in
17 question out of the machines, especially now on election
18 night when it's the most crucial.

19 With a propriety or high-end tape backup system
20 that most PC users don't have, we won't be able to examine
21 the GVF file on election night at 10:00, 11:00 or 12:00
22 o'clock on a laptop the way we could now if they were
23 honoring the Public Records Act. Instead, we have to go
24 through all kinds of extra rigamarol. They know that. And
25 so that's the only possible reason I can see for them

1 wanting to pull the CD drive, because the CD drive is one of
2 the better things about the GEMS server right now. It's
3 convenient for the counties. The biggest GEMS data file I
4 have ever heard of is in the neighborhood of 150, 175 megs.
5 So there is no question that the backup files will fit on a
6 regular CD ROM drive, that's not a problem whatsoever. It's
7 an easy way for the counties to do quick and dirty backups.
8 But Diebold wants to abandon that quick and dirty way
9 because it aids public transparency.

10 No, I don't think so. Don't you dare let them
11 pull those CD drives off of those county servers. If you do
12 nothing else today, don't let them do that.

13 The next thing, let's talk about the paper trail.
14 They are now required to produce a paper audit trail. Some
15 of you have had kids, I've been around kids, I haven't had
16 any myself, but if you tell a six year old to do the dishes,
17 very often he'll do them kind of bad, he'll leave some stuff
18 on it, and that way nobody will ask him to do the dishes
19 anymore. Diebold has produced a paper audit trail system
20 that's as bad as anything a six year old could possibly come
21 up with if he didn't want to do dishes or a paper audit
22 trail. They have used small print on a small piece of paper
23 on a thermal paper that can evaporate if there is a heating
24 or air conditioning failure. At one point they produced
25 this funky magnifying glass that was straight out of the

1 movie 1984, a little Fresno lens that they laughed at, and
2 now they have pulled back. And they didn't bother to
3 provide a six foot printer data cord so that you could put
4 the touchscreen on the lap of a person in a wheelchair and
5 still have the printer work. Literally, you couldn't do a
6 worst paper audit trail from what these clowns have come up
7 with in response to public input.

8 More public input problems. Someone mentioned I
9 think the North Carolina case, but I want to point out that
10 not only is Diebold fighting in North Carolina not to do the
11 software escrow process, which they do here in California,
12 so we know that they don't have too much problem with that,
13 but North Carolina for the first time wants to know the
14 names of the programmers. And we already know of at least
15 one convicted felon, a multiple embezzler, who has been
16 fiddling around with the software, who was actually in
17 charge of development for a major part of GEMS for a couple
18 years. We don't know how many other felons they had working
19 on the software. We know they had cocaine trafficker John
20 Elder working on the ballots, but Diebold doesn't want to
21 name everybody who wrote their software. Gee, I wonder why
22 that could possibly be. Look this company is ethically
23 challenged big time.

24 (Applause.)

25 MR. MARCH: You've heard people say that they have

1 dealt with bank security and the Diebold product doesn't
2 even come close comparing. It's a steaming pile compared to
3 a proper computer security system.

4 Us techies, we know that proper computer security
5 is possible, we've seen it, and this isn't it big time.
6 There are right now two major complaints, the two biggest
7 complaints about the security is the possible alteration of
8 the paper audit trail on the touchscreen or optical scan by
9 ACUBASIC hacking, okay. Now, Mr. Freeman is correct that
10 that will not change the votes, or that alone will not
11 change the votes on a memory card, it will just change
12 what's reported to be the results.

13 But then if you do the kind of hack Dr. Herbert
14 Thompson discovered where instead of using Microsoft Access
15 to mess around with the GEMS database, you use a quick and
16 dirty Visual BASIC script that's just typed into the keyword
17 in notepad, you alter the results at the GEMS database. The
18 contents of the memory card could be absolutely authentic,
19 but you hack the results at either end of it and the effect
20 is a stolen election. The various Diebold security holes
21 mesh together in an entire hit in order to tamper with an
22 election.

23 Now, look, my message here, not just in your
24 office, but to the registrars of voters who are fans of
25 Diebold, who are running Diebold equipment, is this, if you

1 don't want to be accused of cheating at cards, don't let
2 aces fall out of your sleeve at every step, okay. The
3 Diebold elections products, the entire product line
4 including what's in front of you today, is a whole set of
5 aces up sleeves for an election official who wants to cheat.
6 That's the long and the short of it.

7 Now, that being the case, we have to look kind of
8 sideways at any election official, state, federal or local,
9 who's pushing for these turds.

10 (Applause.)

11 CHAIRPERSON MCDANNOLD: Please, Ladies and
12 Gentlemen, we ask you please to maintain the decorum of the
13 hearing.

14 MR. MARCH: I will conclude very quickly. In
15 fact, I won't even take my full time, I won't come close. I
16 will come a little close.

17 Diebold has made a mockery of the entire process
18 of this office, at the federal certification level, at every
19 level. There has to be a point at which you say enough.
20 There is a limit to how much we can tolerate and Diebold has
21 gone over the limit, over and over and over again. They
22 lied to this agency back in the first quarter of 2004, in
23 particular April of 2004, this office slammed them real hard
24 for lying to them over and over again. In this videotape,
25 you're going to see them lie to Cuyahoga County a month ago.

1 It hasn't ended. They are in violation of a court order
2 today. It's got to end. Vote them off the island.

3 (Applause.)

4 CHAIRPERSON MCDANNOLD: Your time is up.

5 MR. MARCH: Thank you very much.

6 (Applause.)

7 CHAIRPERSON MCDANNOLD: Mr. Reis-Knight, is that
8 the correct pronunciation?

9 MR. REIS-KNIGHT: Yes.

10 CHAIRPERSON MCDANNOLD: Okay. And following Mr.
11 Reis-Knight will be Bev Harris.

12 Mr. Reis-Knight has asked for and has been granted
13 ten minutes.

14 MR. REIS-KNIGHT: Before I actually begin my
15 presentation, I would like to thank you for the time to
16 speak.

17 I would like to ask that the audience consider
18 that there are some young children in the gallery that are
19 learning something about our political process. Offer
20 respect to the speakers, offer respect to the rest of the
21 gallery, please.

22 CHAIRPERSON MCDANNOLD: Thank you.

23 MR. REIS-KNIGHT: As a voter in San Joaquin
24 County, I've had the privilege to use Diebold touchscreen
25 system. I found it generally to be nice, simple to use,

1 from the perspective of a long time computer guy. I have
2 been at this for over 20 years. I've fixed hardware, I've
3 fixed software, I've fixed networks, I've fixed everything.

4 As a computer guy, however, I should not be
5 considered the typical voter when considering the electronic
6 voting systems. I have seen many interfaces from many
7 devices over the years and I found the interfaces used in
8 2002 in San Joaquin County generally to be quite
9 comfortable. I have also heard from many nontechnical
10 persons very mixed responses of that same unit at the same
11 time. I will not make that a significant part of my
12 discussion for now except to say that the design of the
13 voter interface must be as simple as possible and all
14 buttons used for navigation and voting tasks must be
15 differentiated and very clean.

16 By way of example, I would suggest arrows of
17 different colors, large sized to indicate the direction of
18 navigation within the voted ballot. I would also recommend
19 that the software provide for a pop-up window for access to
20 the voter ballot summaries published by the state and local
21 jurisdictions as made in reviewing the confusing language
22 inherent in many measures and propositions.

23 I found the touchscreen system was not conducive
24 to the use of a bright light and space is often limited to
25 actually read the print booklets. The purpose of this is to

1 make it easier to complete voting for those with eyes like
2 mine that require different glasses for different tasks.
3 I'm having a heck of a time reading up here by the way.

4 As pertains to the hardware platform in general, I
5 found there was not a lot of information to draw from in the
6 reports from either the consultant or the staff. There is a
7 lot of information about the technology, but there is
8 nothing really about the hardware itself. And I really
9 would like to see more of that information available to the
10 public.

11 So my general concern with the Diebold platform,
12 battery life, first, the pulse surge shielding for the
13 memory card, the memory card with the unique identifier, the
14 voter card design, the use of NCR thermal paper for the
15 paper audit trail and the ability to print multiple audit
16 tapes.

17 As the Diebold voting systems are actually
18 microcomputers, they are sensitive to the amount of
19 electricity available and subject to shut down in the case
20 of power loss. As the availability of power in all areas
21 cannot be guaranteed, the ability to perform on batteries is
22 critical. As an infrequent user of a laptop computer can
23 tell you, the life of a battery installed can make a drastic
24 change in a very short time. I found modern lithium ion and
25 nickel metal hydride batteries can undergo many recharges

1 without memory effect resulting like in the older nickel
2 cadmium and cadmium systems.

3 With the ability of a battery to accept full
4 charge and repeatedly deliver close to the designed levels
5 hundred and thousands of times, it's a benefit. The use of
6 a battery to drive heavy draw devices requires multiple
7 cells however. Very often a single cell will fail because
8 of a defect or a bad internal bridge connection between the
9 cells. This type of failure is often sudden and
10 undetectable except through extensive testing. This type of
11 failure is limited and falls far behind the other type of
12 battery failure in frequency, a full use of the stored
13 energy.

14 The life of a battery is dependent upon the
15 overall power draw from the device and the capacity of the
16 cells. As we all know, the LCD displays on our laptops suck
17 a lot of power.

18 I note in the volume test error log there was a
19 battery life notation of two hours fifteen minutes with
20 about 17 percent capacity remaining after about a five hour
21 test. Given that the polls are open for over 12 hours and
22 many polling locations do not have power reserves, the
23 likelihood that they will shut down before polling is
24 complete is high if there is a general power loss. This can
25 be mitigated, but the costs for that can be very, very high.

1 If the ballot is short and simple, such as those
2 in the two recent special elections brought to us by the
3 governor, voter time at the terminal can be minimal and
4 battery consumption would be nominal for each voter. If the
5 ballot is long and confusing, the voter will spend more time
6 at the machine with the display burning through the energy
7 stored in the battery. I would suggest that what powers the
8 votes, as well the number of votes be considered in
9 certification of the hardware platform. Specifically, is
10 the unit capable of operating for at least 18 hours without
11 external power or a change of batteries. That allows enough
12 time for set up and taking it down, as well as the entire
13 voting process.

14 On the subject of power, the use of the memory
15 card is dependant on a number of factors being correct. The
16 reliability of the cards is a matter of design and
17 statistics can show that those designs accommodate the
18 memory cards will have a long and useful life.

19 Power surge or pulsing of power can destroy the
20 data in the card. I did not notice any indication that the
21 hardware design provides protection against data corruption
22 in such situations. The downside of data corruption is a
23 loss of the electronic voting record for a specific machine.
24 Hopefully the paper audit will deal with this concern and
25 the precious vote of the important voting citizens will not

1 be lost.

2 The benefit of most memory cards is the capability
3 of the card to be rewritten. The Diebold operation manual
4 indicates the memory cards, if I remember reading it
5 correctly, can be erased by voting machines themselves. Not
6 smart. That capability is great if you want to take
7 pictures every day and transfer them to your computer and
8 repeat daily for weeks at a time. When collecting data for
9 an election, it is imperative that the information on the
10 memory card not be erasable, period.

11 I know that Ms. Hench, the Registrar for San
12 Joaquin County, and her peers would disagree with me on
13 this. Her concern is for the integrity of the election and
14 the cost of performing the election. A write-once off-the-
15 shelf memory card is made but not nearly as cheap as an
16 erasable version. Add the cost of a new card for each
17 election for each machine and it is very expensive.

18 Storage of data on a CD ROM or a DVD is iffy
19 beyond five years, it all depends on the quality of the dyes
20 and the substrate fused in the production of the original
21 disk. But a properly stored memory card should be readable
22 for an indefinite period of time.

23 From my experiences in working with memory
24 manufacturers in recent years, I'm aware of many
25 technologies that would allow the Diebold systems with

1 modifications in the firmware to use these technologies to
2 provide fully auditable memory cards where the unique
3 identifier cannot be erased. The identifier will allow the
4 cards and the voting machine to be matched to validate the
5 data. It's possible that the Diebold system does currently
6 provide for this, but again that was not fully clear in the
7 documentation provided to the general public.

8 As I read through the scans of the second volume
9 testing that took place just a couple of months ago, I
10 noticed the incident of voter errors resulting from an
11 improper insertion of the voter card. A simple redesign of
12 the card and a modification to the card reader port would
13 ensure that the card was inserted correctly or not at all.

14 From my own experience with the Diebold systems as
15 an informal observer, there's a lot of frustration as people
16 wait for the pollworker to come and reset the machine.
17 Along with this inconvenience to other voters, there is a
18 great deal of mistrust in the machines when something as
19 simple as putting the card in wrong makes it stop.

20 There is also concern on the use of NCR or thermal
21 paper for the paper audit trail. The documentation provided
22 concerning modifications to the paper audit trails indicates
23 the use of paper rolls. It's been clarified in today's
24 meeting that they are actually using thermal paper at this
25 point and I do recall hearing something about NCR paper

1 being used or at least being considered.

2 By design, NCR paper is fragile and subject to
3 erasure in the presence of excessive heat, moisture and many
4 common chemicals. If you spray it with 409, it's gone.
5 Atherton Papers holds the trademark for NCR paper and this
6 was pulled from their website. Carbonless paper is made by
7 coating long grade papers. Coatings are coated back and
8 front. On one side is a layer of microcapsules that
9 contains a colorless dye, on the other is a layer of plain
10 resin. When the two coatings meet under pressure the
11 capsules break and release the dye. The dye mates and you
12 have your image.

13 How long will the image last. In sunlight,
14 plasticizers and other external factors affect the life of
15 the carbonless image. Under normal office conditions, an
16 image will last indefinitely. For example, the IRS has
17 approved carbonless forms for financial record retention,
18 which means the forms have to keep their image for a minimum
19 of seven years. In my own experience, I have seen them fade
20 in less than ten. In a perfect world, NCR paper only has a
21 life of ten years. If the NCR specification is switched to
22 thermal paper, you get similar issues. Once again, we have
23 heat sensitivity, we have chemical degradation, we have
24 photo degradation, all of which restrict the life of it.

25 MS. INGRAM-KELLY: Thirty seconds.

1 MR. REIS-KNIGHT: In summary, there's a reference
2 to printing the audit results multiple times. I concur with
3 that the audit report be included in the containers for all
4 the ballots. Where I differ, when the secure container is
5 noted as being smaller than the feed roll. I would suggest
6 that a large number of voters and a lengthy ballot may
7 result in a situation whereby continuous ballot rolls will
8 not fit.

9 We need to adjust these and many other concerns,
10 and I thank you very much for the time.

11 MR. MCDANNOLD: Thank you.

12 (Applause.)

13 MR. MCDANNOLD: Finally, Ms. Bev Harris. And Ms.
14 Bev Harris has requested eight minutes and it has been
15 granted.

16 MS. HARRIS: I saw the last thirty seconds. Were
17 there other warnings before that, I didn't notice?

18 MS. INGRAM-KELLY: No.

19 MS. HARRIS: Okay. So you're going to warn at 30
20 seconds?

21 MS. INGRAM-KELLY: Yes.

22 MS. HARRIS: Just so I know.

23 I have to tell those of you who are here I get
24 really nervous speaking publicly and so I really relate to
25 the courage that you brought with you to the hearing when

1 you decided to step up and do this. This is probably the
2 least favorite part of my job.

3 My name is Bev Harris, I'm the Executive Director
4 of Blackbox Voting, Inc., which is a national consumer
5 watchdog. And I would like to address statements that have
6 been made to me by election officials regarding their
7 understanding of how the Diebold system works, versus the
8 actual instructions and design.

9 I realized on my drive down here, I'm a
10 grandmother from Renton, Washington, and I don't really know
11 how I came into this, but I need a clarification that do
12 relate very specifically to what I'm going to bring up here.
13 And I'm best know for my writing in my website.

14 My actual day-to-day work takes place mostly in
15 the field where I overview and observe election officials as
16 they interact with their technical staff and voting systems.
17 And in this capacity, I realized there are hundreds of
18 election officials, ranging from local officials to state
19 elections director. Many here perhaps would be surprised to
20 know that they are typically cordial, they are constructive
21 and they are not adversarial, except in certain cases.
22 Though it's rarely adversarial, elections officials turn to
23 adversarial responses when they hide information, withhold
24 the ability for citizen oversight, refuse to alter public
25 records or engage in name calling. These officials are

1 unusual, however, some of those who behave appropriately are
2 sometimes accused with malicious leadership, this is not how
3 it typically happens. We usually have pretty good visits
4 when I'm out there.

5 I'm the person who found the Diebold program files
6 left by the vendor on the internet for six years. These
7 files that hold programs and certification packets for
8 nearly all the systems, including the TSX versions 1.9 and
9 1.96 for the optical scan and voter card encoders. It is
10 these files that are being studied and David Dunn has
11 commented on and David Jefferson observed. And Dr. Herbert
12 Thompson informed David Jefferson and staff members from the
13 California Secretary of State site in August of 2004,
14 learned of the giant defect with the visual BASIC script,
15 which might beg the question as to why nothing has been done
16 until after the elections.

17 In addition, I spent hundreds of hours and into
18 the certifications, logic and accuracy tests and studied the
19 Diebold user manuals, the hardware and software, and I've
20 worked extensively with computer consultants like Harri
21 Hursi, Dr. Herbert Thompson and others examining the
22 software and how it works. I was coplaintiff with Jim March
23 on the lawsuit that Don Jeter had made claims to California.
24 I was the first to expose the use of uncertified software in
25 California. That happened on September 10th, 2003, followed

1 quickly by a letter from Jim March to the Secretary of State
2 and a telephone conversation between me and Mark Carroll
3 from the Secretary of State and after that things were done.
4 The organization I founded, Blackbox Voting, arranged for
5 Harri Hursi to come to the US. I provided to him with
6 specific Diebold files to study, the ACUBASIC source code
7 which I had obtained from the Diebold website. I attended
8 the field test in Leon County, Florida where the giant
9 defect and the memory card vulnerabilities were tested and
10 proven.

11 In my earlier work, I spent seven years doing on-
12 site inspections for a national franchisor to determine how
13 their operating procedures were being followed. And to find
14 out one of the local administrators had the stupid
15 procedures. This kind of work has to be done in the field
16 by observing the acts in the question and sometimes this
17 will cause visits. And this is the training that I use when
18 visiting election officials.

19 I know from my field work that most election
20 officials are trying to do things right, they are generally
21 good people. However, I bring two more areas of expertise.
22 In 1995 and 1996, I worked for legendary Washington D.C.
23 investigative reporter Jack Anderson. He helped break the
24 stories of Watergate, the savings and loan scandal, the
25 abuses of the former FBI director J. Edgar Hoover. It was

1 from Jack Anderson that I learned the concept of dumpster
2 diving. He used to dumpster dive J. Edgar.

3 More important, I learned from working with
4 Anderson that public officials are not always honest. I
5 have been a professional diver for a decade and in this
6 capacity I was offered by him three assignments where I had
7 to analyze embezzlements. And in this capacity, I also
8 reviewed the embezzlement technique and got to know the
9 embezzlers themselves. One of these was just a wire
10 transfer embezzlement scheme, one was a Medicaid fraud
11 scheme, one was a tax fraud scheme.

12 In this capacity, I learned that an assumption
13 offered by the taxpayer or by the voter and almost always
14 made by elections officials is incorrect. I hear comments
15 from voters who say my elections official is honest. That
16 may be, probably even so. The reality is you can't know
17 this by mannerisms or other actions. Embezzlers I found
18 included a jolly and kindly grandmother who was popular and
19 baked cookies for the staff, a sweet mother of preschoolers,
20 and a very professional financial services expert. None of
21 them seemed dishonest, and even the people who worked with
22 them side by side for years were amazed when they learned
23 that these people had been stealing.

24 Therefore, a voting system which must be suitable
25 for the use as intended under California law can only be

1 considered appropriate for the use intended if it addresses
2 the users, the elections officials in two ways. When the
3 2000 elections were in dispute nationwide, there were
4 hundreds of elections officials in California. The system
5 has to be designed on the one had to thwart corrupt
6 officials, because they do exist. We need to be able to say
7 this. Most of them are not, some are. In my experience
8 working with Anderson and the embezzlements about one out of
9 20 people have the character flaws that can be exploited.

10 Even if an elections registrar are completely
11 honest, it's unfair to expect the elections official to be
12 so clairvoyant that she can ascertain whether her employees
13 might be tempted by bribes, blackmails or other favors.
14 This is the voting system itself, like accounting software,
15 like bank software, must include components to reduce the
16 likelihood that an inside employee can cheat. This actually
17 protects insiders from accusations. And since the Diebold
18 system provides no protection for individual IT employees.
19 Furthermore, in turn no security means the system currently
20 should not be certified.

21 (Applause.)

22 MS. HARRIS: Fixing the correct configurations of
23 Windows at some time in the future is meaningless when you
24 consider that a percentage of our society has character
25 flaws. And this is not easy to correct if they can pull a

1 program off and use it somewhere else and do something and
2 then stick it back on. It is the design of GEMS that is the
3 defect, not the design in Windows.

4 I have thirty seconds.

5 Now, specifically, elections officials do not
6 understand until the fraud occurs. We have asked elections
7 officials to give us all the information they have on the
8 memory cards. What they've done in one case was to send us
9 a bereavement card. This is what she thought a memory card
10 was. In Alameda County we have a nice elections official,
11 unfortunately she only spot checks the poll tapes against
12 the GEMS server one percent because she doesn't understand
13 the GEMS defect.

14 And I know my time's up, but I would say that as
15 the last thing, the response has been instead of dealing
16 with the issue has been to deal with it in terms of
17 character assassination going against those of us who are
18 actually trying to expose these flaws, instead of dealing
19 with the flaw.

20 Thank you.

21 (Applause.)

22 CHAIRPERSON MCDANNOLD: Once again this is not the
23 appropriate forum for applause.

24 Okay, we're going to begin here and try to get a
25 few in before we break for lunch. This is the period for

1 the general comment from the floor.

2 Once again, if you're interested in speaking,
3 please raise your hand and Jason will pass out the speaker's
4 cards. If you have one to collect, please raise it so we
5 can get it collected.

6 We're going to limit all speakers to two minutes.
7 Again, you will get a 30-second warning. As we mentioned
8 before, we ask that you please treat all the speakers with
9 the courtesy that you would expect when it's your turn up
10 there.

11 The first speaker will be Ken MacPherson.
12 Immediately following Ken MacPherson will be Robert Richard.
13 So we will continue to call the next person so they can
14 prepare and be close to the podium.

15 MR. MACPHERSON: Thank you. First of all to
16 identify myself, it's M-a-c, there is no relation that I
17 know of.

18 I'm a public school teacher, I teach high school.
19 I have been called upon to teach government, among many
20 other subjects. And one of my biggest problems when I see
21 my classroom and I talk to them about voting is it doesn't
22 matter.

23 This company that you're thinking about certifying
24 has a proven track record that it really doesn't matter.
25 And the audacity that we're even thinking about inviting

1 them into this state is reprehensible. They certainly do
2 not meet the standard that this state's voters expect, their
3 track record proves it, and as a history teacher you look at
4 the history of a company, you look at the history of a
5 country, a company, a person and you base their future
6 actions on what they have done in the past. You have
7 nothing more to look at than what this company has done in
8 the past to say no.

9 Good day.

10 (Applause.)

11 CHAIRPERSON MCDANNOLD: Next will be Mr. Robert
12 Richard, followed by Theresa Favuzzi.

13 MR. RICHARD: Hello, my name is Bob Richard and
14 I'm speaking on behalf of Californians for Electoral Reform.
15 And I want to thank you for the opportunity to participate
16 in this hearing.

17 I want to say something very, very brief about the
18 voter verified paper trail, and my organization has
19 supported having paper trails since 2003 and has supported
20 using that paper trail for manual one percent recounts.

21 I don't know whether the defects in Diebold's
22 paper trail mechanism with respect to manual recounts are
23 significant enough that you would want to deny certification
24 on that basis alone, but I do want to say that a paper
25 record that's on a roll is going to be much harder to

1 perform the manual tally on than the ballot cards that come
2 out of the optical scanner. And I think that that's an
3 important question, because the manual tallies are an
4 important part of the election process as it's currently
5 constituted.

6 And Californians for Electoral Reform is concerned
7 about that, it is a right for all citizens concerned about
8 this process because as time goes on we are going to be
9 pressing for election reforms that involve many players,
10 activists --

11 MS. INGRAM-KELLY: Thirty seconds.

12 MR. RICHARD: -- legislators, executive officials
13 getting together, and county registrars and we need to learn
14 ways to work together to solve problems in a
15 nonconfrontational way. And I hope that the experience
16 around paper trails, the experience around certification can
17 provide some lessons as to how to do that process better.

18 Thank you very much.

19 (Applause.)

20 CHAIRPERSON MCDANNOLD: Following Theresa will be
21 Mariellen Layne.

22 MS. FAVUZZI: Good day. My name is Theresa
23 Favuzzi, I'm the Executive Director of the California
24 Foundation for Independent Living Centers, representing 25
25 independent living centers who serve over 140,000 people

1 with disabilities throughout the state.

2 We took the time to review this particular Diebold
3 system and we found four main access issues. The first of
4 which you mentioned was the lack of a sip-and-puff
5 capability. Second is the lack of curbside voting and the
6 ability of someone to actually verify that vote.

7 The third is that obviously, as has been mentioned
8 before, the verified paper audit trail is not verifiable by
9 people who are blind or have low vision, and we actually
10 expect to have people access to the verification process.
11 And fourth, the card slot placement is very poor, it
12 requires someone to actually put their arm all the way up
13 and insert sideways into the machine which is really very
14 limiting for folks who have manual dexterity issues and
15 limited arm mobility.

16 So we are interested in having accessible voting
17 machines and this one really does not seem to fit.

18 Thank you.

19 (Applause.)

20 CHAIRPERSON MCDANNOLD: Thank you.

21 Following Mariellen Layne will be Neil Hudson.

22 Yes?

23 MR. HUDSON: I'm Neil Hudson.

24 CHAIRPERSON MCDANNOLD: Okay, why don't you go
25 ahead and go. I guess there's no Mariellen Layne.

1 Following Neil Hudson will be Dave Joki.

2 MR. HUDSON: I would just like to suggest that
3 members of this panel might have an 18-year-old daughter who
4 brings home a gentleman who she wants to marry, and she
5 tells her father, that is you, this man is a very reputable
6 man, you see how well dressed he is, dad. He does have some
7 history that's interesting. He knows some ex-felons, he
8 knows some people who are embezzling things, and by the way,
9 dad, he works for a bank, but he's a really nice guy. And
10 he does keep secrets, he doesn't tell me everything, he says
11 it's proprietary. But he is nice, dad, I know you will like
12 him.

13 And without pursuing this any longer, I'm sure you
14 understand where I'm going with this. Would you let your
15 daughter marry this man?

16 And I think it's incumbent upon this panel to look
17 at not only the checkered history of Diebold, but also the
18 fact that we are imposing upon election voters and election
19 officers a very technical system. We have seen in San Diego
20 County the volunteer election workers quitting because they
21 did not have any cognizance of computers. They probably
22 don't even own a computer at home, and they have a hard time
23 figuring out how to work their VCR and their television.
24 These people are not technical people and the majority of
25 the volunteers have to rely on technicians to come in and

1 help them out, and if things crash then that's the problem
2 with the voting, the ballot place closes down.

3 And in Stanislaus County where I come from, the
4 ES&S personnel ran the last counting on the election, they
5 ran in the counting room. If you visited the counting room,
6 you couldn't get into that. As an observer, you couldn't
7 see into the glass room enough to know what was going on in
8 there. The room was filled with black shirt ES&S employees.
9 The voter, the people in the county were on the outside
10 looking in, and this is not the way we need to do our
11 elections. This is privatizing a public service. We can't
12 privatize our elections.

13 (Applause.)

14 MR. HUDSON: Thank you.

15 We need to look at what happens when we do
16 privatize elections. We have a lot of examples every day of
17 corporate crime going on and we cannot trust these
18 corporations to run our elections.

19 Thank you.

20 (Applause.)

21 CHAIRPERSON MCDANNOLD: Next is Suzanna Gee.

22 Following Suzanna Gee will be Michelle Gabriel.

23 MS. GEE: My name is Suzanna Gee, I'm an Assistant
24 Managing Attorney at Protection and Advocacy in the
25 Sacramento office. And Protection and Advocacy is a

1 statewide disability rights organization.

2 I had the occasion to observe and actually
3 participate in the demonstration of the TSX and the printer
4 on October 20th, and as a result I have submitted written
5 comments to Mr. McDannold regarding the accessibility for
6 people with physical disabilities and also for individuals
7 who are blind or who have low vision.

8 In addition to submitting the recent comments on
9 October 31, the agency also submitted the memoranda dated
10 April 11 and April 16.

11 In review of the staff report and analysis, I did
12 notice that a certain election code was left out which is
13 19251, subsection A, which defines accessibility, and
14 subsection C which defines voter verified paper audit trail.

15 I would like to quickly go over the memo the
16 agency submitted October 31 regarding the summary of
17 recommendations to the Secretary of State regarding systems.
18 And some of these comments were focused, as mentioned
19 earlier, specifically by the woman who spoke maybe two
20 people ahead of me.

21 The first point, the voter with the disability,
22 including a person who is blind, should be able to confirm
23 directly what votes appear on the printed paper, rather than
24 rely on software or some other system that's separate from
25 the printed paper itself.

1 The TSX and AVPM station, the whole station
2 itself, should be made adjustable in height for a person who
3 is short in stature or who uses a wheelchair.

4 The voting card slot should be accessible so that
5 a person with limited reach can engage the machine by
6 sliding the plastic card into the sleeve, which is up above
7 the screen itself.

8 In addition, the design of the AVPM, the printer
9 itself, should be redone, because right now the way the set
10 up is, it physically protrudes out maybe four inches or so
11 so that a person who is right handed but has --

12 MS. INGRAM-KELLY: Thirty seconds.

13 MS. GEE: -- physical dexterity problems would not
14 be able to access the screen very easily.

15 In regards to the sip-and-puff, as you mentioned,
16 Mr. McDannold, it's not available, but Diebold is
17 recommending a stylus instead. The public has been unable
18 to demonstrate or see how that would work and is unsure what
19 pressure would be needed to press the stylus against the
20 screen to engage the activity itself.

21 MS. INGRAM-KELLY: Time.

22 MS. GEE: Thank you for the opportunity.

23 CHAIRPERSON MCDANNOLD: Thank you.

24 (Applause.)

25 CHAIRPERSON MCDANNOLD: Let's take one more before

1 we break for lunch.

2 MS. GABRIEL: Good morning, my name is Michelle
3 Gabriel, a citizen of Oakland, California.

4 I'm requesting today that Diebold not be certified
5 for use by the State of California.

6 Earlier this year, our Secretary of State
7 published a series of editorials and legislative advisories
8 against SB-370. SB-370 was signed into law and must be put
9 into practice. Many of the issues that the Secretary of
10 State brought up in opposing SB-370 hold true for this
11 specific Diebold implementation of the AVVPAT.

12 Not all vendor implementations are equal and the
13 Diebold implementation has a number of serious weak points
14 that should cause it to not be certified by the State, as
15 stated by the Secretary of State's various editorials and
16 issues.

17 Number one, the Secretary of State is concerned
18 that this bill treats the regular copy of a DRE as a ballot
19 while not requiring the paper record copy to meet the
20 standards of a ballot. The Diebold implementation of AVVPAT
21 has this issue. It is required to provide a ballot marking
22 device. It can meet this requirement.

23 Number two, the Secretary of State is concerned
24 that without these standards the paper record copy will not
25 retain its integrity during the one percent manual tally and

1 any necessary recounts. So is the voting activist
2 community. It has been brought up numerous times that no
3 testing has been done to see how the paper roll would
4 actually be used for a recount. It's not been done by the
5 suppliers, it has not been done by the federal qualification
6 or by the state certification. It is crucial for the
7 function of the system, since there is a one percent manual
8 recount of precincts. And many groups are putting an even
9 higher level of manual recounts being done.

10 Once again, the Diebold implementation of AVVPAT
11 has this issue. Other suppliers provide ballot marking
12 devices that can meet this requirement.

13 From an editorial in the San Jose Mercury News,
14 our Secretary of State said using paper receipts as
15 secondary ballots at this point is too risky. They are
16 designed for the voter's review and are not printed on
17 ballot quality paper and might not retain their quality
18 during all the lengthy recount and legal challenge periods.
19 And once again the activist community agrees. The Diebold
20 implementation of AVVPAT has these characteristics.

21 Of additional concern though is that even though
22 it was the Secretary of State who brought up these issues, I
23 see no testing was done by the Secretary of State to address
24 them. Has a manual recount ever been performed using any of
25 these devices for a sample election, especially a very

1 complicated election such as the primary that's coming up in
2 June?

3 I urge the Secretary of State and the staff to
4 walk the talk. SB-370 is law and it must be complied with.
5 If this equipment is not capable of doing that, it cannot
6 meet functional requirements and therefore should not be
7 certified.

8 Thank you.

9 (Applause.)

10 CHAIRPERSON MCDANNOLD: It's just a few minutes
11 before the hour, we will now break for lunch and resume
12 promptly at 1:00 o'clock p.m.

13 Thank you.

14 (Thereupon lunch recess was taken.)

15 CHAIRPERSON MCDANNOLD: Okay. Thank you. We're
16 going to resume the hearing, please.

17 The next speaker will be Phil Rockey, followed by
18 Alan Fiedler.

19 While we're waiting for them to come forward,
20 we've been asked and we would like to take a moment and
21 reintroduce the Panel for those who may have gotten in late
22 into the room.

23 To my far right seated at the end of the table is
24 Casey Beyer. Casey is from our executive staff, he's the
25 Chief Assistant Secretary of State. Next to him to my right

1 is Theresa Carroll, the Assistant Secretary of State for
2 Legislative and Constituent Affairs, also from our executive
3 staff. To my immediate right is Michael Kanotz, he is an
4 elections counsel with the Secretary of State. My name is
5 Bruce McDannold, I am the Interim Director of the
6 Secretary's new Office of Voting Systems Technology
7 Assessment. And then to my immediate left is Mr. Steve
8 Freeman. Steve Freeman is the State's consultant for
9 testing and evaluation of voting systems.

10 And with that said, let's resume the hearing with
11 Mr. Phil Rockey.

12 MR. ROCKEY: Thank you. I just wanted to go on
13 record as far as not being in favor of the Diebold
14 recommendation by staff. And it's kind of sad to hear that
15 according to your rules that there were no questions
16 allowed, I was kind of wondering why that was. Since I
17 can't ask questions, then I will just I guess rhetorically
18 ask. On the back of your agenda you have some folks that
19 are in favor, I wonder if you had a sheet for those that
20 were against it somewhere to give equal time possibly.

21 And the third thing I would like to point out is
22 that you didn't allow anyone to relinquish their time
23 because I'm not going to even take my two minutes to others,
24 and I was wondering why you would not allow that. I believe
25 in the US Congress they allow people to relinquish their

1 time to others.

2 Thank you.

3 CHAIRPERSON MCDANNOLD: As a point to the sheet
4 that you're referring to, we did not bring and present.
5 That was brought by someone attending the hearing and put
6 out.

7 MR. ROCKEY: It says Bruce McPherson, Secretary of
8 State, public hearing on proposed certification of Diebold
9 Voting System agenda. And on the back of it it has a list
10 of people that are for it.

11 CHAIRPERSON MCDANNOLD: Okay. And that was
12 brought by someone who printed it on our agenda.

13 MR. ROCKEY: Oh, it's a bit confusing to some of
14 us.

15 CHAIRPERSON MCDANNOLD: Understood. That's why I
16 made a point of clarification.

17 Thank you.

18 Mr, Alan Fiedler.

19 MR. FIEDLER: Thank you. My name is Alan Fiedler,
20 I live in Mountain View. I'm an electrical engineer with
21 degrees from Cornell and UC Santa Barbara.

22 I have been working in the semiconductor industry
23 as a design engineer for 25 years for a number of major
24 semiconductor and software manufacturers, including LSI
25 Logic, Intel, and Microsoft.

1 I'm familiar with the effort involved in producing
2 robust systems comprising complex hardware and layers and
3 layers of software, but for use in less than critical
4 applications. It ain't easy.

5 With all due respect to many of the engineers at
6 Diebold, for critical applications such as voting, without a
7 properly managed, adequately staffed, sufficiently funded
8 engineering team, it is impossible. The testimony I've
9 heard today does nothing to dispel this notion.

10 Not too long ago, a coworker of mine from New
11 Hampshire told me of his experience as a precinct captain on
12 election day in New Hampshire. In his precinct you see,
13 paper ballots were marked by hand and dropped in a box, but
14 not before passing through an optical scanner. At the end
15 of the day at 7:00 p.m. the doors were locked, but not
16 before anyone who wanted to watch the count was allowed in.
17 By 9:00 o'clock the optical scan totals were verified by
18 hand count, summary sheets filled out, signed and attested
19 to, and the whole package driven to the Secretary of State's
20 office by 9:00 o'clock.

21 Optical scan or paper ballots, coupled with
22 systems to assist the disabled to mark and verify a paper
23 ballot provides for a method of voting and vote counting
24 that is transparent to the layvoter, not to people just like
25 me, and is accountable, secure, low tech, and relatively low

1 cost. The Diebold DRE systems provide none of that. Folks,
2 this is a no-brainer, this is easy. Do not certify the DRE
3 systems.

4 Thank you.

5 (Applause.)

6 CHAIRPERSON MCDANNOLD: Next will be Linda
7 Bagneschi Dorrance. Please forgive me if I butchered that
8 name. And then followed by Alan Dechert.

9 MS. BAGNESCHI DORRANCE: Thank you very much. My
10 name is Linda Bagneschi Dorrance, and I'm another California
11 resident who is here to urge you to please not certify
12 Diebold machines for use in California.

13 I am very disturbed by what I have learned about
14 Diebold. The company hired felons with records for
15 embezzlement and computer fraud to write their software.
16 Their CEO Wally O'Dell is a partisan activist. He bragged
17 to the Ohio GOP leadership that he would bring the vote home
18 for them in the 2004 Presidential Election.

19 A recent test demonstrated a failure rate in
20 excess of a staggering 20 percent. Most disturbingly,
21 reports of dramatic discrepancies with polls continue to
22 pour in leading to repeated accusations of election rigging.
23 For example, from what I understand, Georgia had a long
24 history of voting Democratic, then they switched out their
25 voting systems to a hundred percent Diebold paperless

1 touchscreen. Then in 2002, Democrat Max Cleland ran for the
2 US Senate. Polls showed him winning by 58 percent, and then
3 low and behold he lost and, of course, no paper trail
4 existed to verify the vote counting. This has been
5 happening over and over again. And most recently in Ohio
6 earlier this month during the November 8th election with a
7 huge discrepancy between the polling and the official
8 results.

9 Not only should Diebold not be certified, no
10 system should be certified unless it is open source code.
11 Taxpayers pay for the machines, we have a right to verify
12 that they are counting the votes accurately and that there
13 are safeguards to ensure vote rigging cannot occur. And
14 better yet we should be hand counting paper ballots in
15 public.

16 Thank you.

17 (Applause.)

18 CHAIRPERSON MCDANNOLD: Thank you.

19 Following Mr. Alan Dechert will be Ted Newman.

20 MR. DECHERT: I'm Alan Dechert, I'm the president
21 of the Open Voting Consortium.

22 Our organization was recently cited in the report
23 released a month ago today, as a matter of fact, by the US
24 General Accountability Office. We're cited as a key
25 initiative among the nongovernmental organizations that are

1 working to ensure the reliability and security of voting
2 systems.

3 We don't think that Diebold should be certified,
4 but we don't think that any system should be certified that
5 maintains that part of the process should be secret. We
6 think it's absurd that part of this public process of voting
7 should remain secret.

8 I'm going to read you a little bit from your own
9 Voting Systems Technology Assessment Advisory Board document
10 dated October 11th, which I got off of your website. These
11 are your technical experts such as David Jefferson and David
12 Wagner and Matt Bishop and Lorretta Corning.

13 It says, the fundamental barrier to analysis of
14 these software errors is the lack of access to source code
15 for the TSX. With access to this material, it would be
16 possible to identify the cause of each software failure,
17 diagnose the defect in the software, and ascertain the
18 magnitude of the defect. Lacking source code though, we
19 have no way to perform such an independent evaluation. This
20 is a very unsatisfying position to be in.

21 Our organization will be sponsoring legislation
22 next year to require that all aspects of election
23 administration be publicly inspectable, and that includes
24 voting software.

25 Thank you.

1 (Applause.)

2 CHAIRPERSON MCDANNOLD: Following Mr. Newman will
3 be Judy Bertelsen.

4 MR. NEWMAN: Good afternoon.

5 I wanted to thank the Secretary of State's office
6 for its efforts in considering the viability of Diebold
7 Elections Systems for elections. As I continue to read and
8 learn about the equipment and Diebold's ongoing election
9 activities, I have to ask myself and also this panel as the
10 Secretary of State's representative, why are we here today.
11 There are many presenters today who have given both live
12 comment and in writing who are discussing the technical
13 issues in question, and I would like to give my comments.

14 The Secretary of State for California's continued
15 flirtation with the certification of Diebold Elections
16 Systems Incorporated equipment is in line with allowing
17 Enron to remain in the energy supply business after all that
18 is known and has transpired.

19 (Applause.)

20 MR. NEWMAN: Time and again, Diebold has shown
21 that the caliber of equipment that it produces and offers to
22 state election officials across the nation is substandard
23 and cannot handle the rigors of the election environment per
24 the current election code. Coupled with that, Diebold has a
25 reputation of having hired convicted felons and making the

1 statement on the executive level they would deliver an
2 election to a particular political party.

3 Consideration of Diebold doing any elections
4 systems business in California would be tantamount to the
5 federal government studying the reliability of organized
6 crime running the Treasury.

7 (Applause.)

8 MR. NEWMAN: What is the Secretary of State's
9 fascination with this equipment? It has been publicly
10 demonstrated that in secret a proprietary software can be
11 directed into many different paths. The citizens in
12 California are very leery of the integrity of their
13 elections due to the evidence of fraud in the '04
14 Presidential Election nationwide, and as announced by the
15 GAO three weeks ago.

16 The citizens demand far better from the election
17 process and the office that supervises them.

18 MS. INGRAM-KELLY: Time.

19 MR. NEWMAN: And I want to thank you very much. I
20 strongly urge that you do not certify this third-rate
21 equipment.

22 (Applause.)

23 CHAIRPERSON MCDANNOLD: Thank you.

24 Ladies and Gentleman, we have asked before, please
25 don't applaud, you're just affecting taking away time from

1 the speakers. You're also affecting our ability to perhaps
2 record that in the official transcript.

3 Following Judy Bertelsen will be Ferris Gluck.

4 MS. BERTELSEN: I'm Judy Bertelsen with the Voting
5 Rights Task Force and the California Election Protection
6 Network.

7 The Diebold AccuVote-TSX with AccuView printer
8 module hardware should not be certified because it is not by
9 standards expressed by the Secretary of State able to meet
10 the requirements of the Elections Code or the recently
11 passed and signed California State legislation SB-370.

12 The system is poorly designed with a reel-to-reel
13 thermal paper record that does not protect the anonymity of
14 all voters and that does not use ballot quality paper. The
15 system continues to have jams. The small print does not
16 lend itself to actual use for a hand count, either the one
17 percent hand count required by the Elections Code or the
18 full hand count that may be needed in a closer questioned
19 election.

20 It is the purpose of the voter verified paper
21 audit trail to be able to do such a hand count. The small
22 print is not easily viewable by a group of simultaneous
23 observers as is needed in a hand count or recount. There is
24 no evidence that Diebold's technology can be used to perform
25 a timely and cost effective hand count. As far as we know,

1 there has been no serious test of this capability.

2 Some additional acknowledged flaws include that it
3 cannot be used for curbside voting, other accessibility
4 flaws, no sip-and-puff possibility, no voter verifiability
5 for the sight impaired. Security problems have been noted
6 by Mr. Freeman today.

7 The TSX AccuView printer module was found earlier
8 to be noncertifiable. Secretary of State McPherson pointed
9 out that this technology could not meet the requirements of
10 SB-370, but he therefore recommended not that the technology
11 be changed, but that the law not be passed.

12 But the law was passed and it has been signed and
13 it is law and must be followed. Because of this, Diebold's
14 inadequate technology should not be certified by the
15 Secretary of State.

16 (Applause.)

17 CHAIRPERSON MCDANNOLD: Following Ms. Gluck will
18 be Bin Ries-Knight. Next will be Clair Toomey. Is there a
19 Clair Toomey here? How about a Randy Hicks? Is that Randy?
20 Andrew Dra'l? Genevieve Katz?

21 MS. KATZ: Here.

22 CHAIRPERSON MCDANNOLD: Okay, Genevieve Katz will
23 be next, thank you.

24 MS. GLUCK: Good afternoon. To mirror the remark
25 on the individual items up for certification at today's

1 hearing would be to miss the forest for the trees. What it
2 seems to me we have here is a rush to judgment to certify
3 voting wares that have no place being deployed to give the
4 appearance that they accurately record and tabulate votes.

5 It seems to me that the onus should be on the
6 voting machine vendors to prove within a very small margin
7 of error, I just thought up the figure 0.00001 percent. I
8 don't know what percent error they're allowed, but that
9 their products are safe, secure and transparent, instead we
10 as citizens find ourselves having to fight to disprove the
11 validity of the equipment and of elections. So it seems
12 like the pressing need right now is to meet accessibility
13 requirements, comply with ADA under HAVA.

14 And I know it's not certified yet, but there is
15 more than one way to skin a cat which is a completely
16 nonelectronic device. So voting on paper assistive device
17 that people with motor skills difficulties and visual
18 impairments can have access to in the polling place.

19 So thank you for your time.

20 CHAIRPERSON MCDANNOLD: Thank you.

21 (Applause.)

22 CHAIRPERSON MCDANNOLD: Following Genevieve will
23 be Jean Jackman. Is there a Jean here? Thank you.

24 MS. KATZ: Good day. I'm Genevieve Katz and I'm a
25 member of the Wellstone Group. And we are a group of

1 concerned citizens as is everyone here following up and
2 because we want a clean, a good, a safe, and legitimate
3 election machines.

4 I have been following the VSSP, the Voting Systems
5 Security Panel, for a number of years right now and I don't
6 see it anywhere on the site. If it has been disbanded, I
7 would like to know that. I would like to see that in
8 writing. I would like to know if there is another panel
9 that has been empowered to replace that.

10 I would also like to know some of the
11 qualifications of the members who sit on this new panel, if
12 there is a new panel. And part of that is my distrust as
13 the people who are choosing elections systems machines, and
14 I can thank Diebold for that.

15 Thank you very much.

16 (Applause.)

17 CHAIRPERSON MCDANNOLD: Thank you.

18 Is Ann Privateer here? Ann will be next.

19 MS. JACKMAN: Good morning, my name is Jean
20 Jackman and I am a citizen from Davis.

21 I cherish the right to vote. I need to know my
22 vote is not being corrupted. The common good is always
23 being corrupted with obscenely expensive sound bite election
24 spin and corporate financed candidates and elected officials
25 who are ethically challenged or just plain liars. Please

1 assure us of an authentic vote. We demand it and I
2 personally vow until the day I die to fight this tainted
3 process.

4 I am grateful, so very grateful to the techies and
5 other eloquent speakers who spoke today, people who can
6 address the various components. It doesn't take a techie,
7 however, to understand that the Diebold Corporation is
8 ethically challenged. Why are we dealing with a corporation
9 that has already lied to the Secretary of State.

10 I also notice the qualifying language that even
11 when you who spoke from the panel you used. Mr. Freeman
12 said fairly confident, more work to be done, need additional
13 procedures. Mr. McDannold said appears to meet
14 requirements.

15 The Diebold official who spoke today referred to
16 the Ohio election. Does he think we are idiots here? We
17 don't care about the Secretary of State, there's much more
18 interesting interesting information about all the hanky
19 panky that happened with the Ohio elections.

20 I want a system in which we are fully confident.
21 Please do not certify this until the system is able to
22 thwart corrupt officials. Don't privatize our elections. I
23 no longer personally have faith that my vote will not be
24 corrupted. Please, let's preserve that important thing, our
25 vote.

1 Thank you.

2 (Applause.)

3 CHAIRPERSON MCDANNOLD: Following Ms. Privateer
4 will be Michael Smith.

5 MS. PRIVATEER: As a concerned citizen who votes,
6 I'm opposed to Diebold Voting Systems. And after listening
7 to all of the people who have spoken, I am more convinced
8 than ever that Diebold Voting Systems should not be
9 certified.

10 It is imperative in a democracy that we have open
11 and verifiable elections in our cities, in our state and in
12 our nation. Diebold Voting Systems are not open and they
13 are not verifiable.

14 Thank you.

15 (Applause.)

16 CHAIRPERSON MCDANNOLD: Following Mr. Smith will
17 be John Barrilleaux.

18 MR. SMITH: Good afternoon, Michael Smith, Marin
19 County Registrar.

20 Let's see, ethically challenged, corrupt, liars, I
21 hope that I'm not lumped into that group, though I have been
22 referred to such as a registrar.

23 So that said, some years ago I looked at voting
24 systems in '99. Marin County had a punchcard system, I was
25 so bothered by it that I changed out the voting system. We

1 went to a paper-based optical scan that was Global, they
2 were since acquired by Diebold. The system has served us
3 quite well.

4 What we're looking for today is the certification
5 of the system to augment our existing investment with a
6 request that it does meet the needs of the disabled and
7 visually impaired community.

8 For the first time, following federal law there is
9 now a requirement for those individuals that do not have the
10 opportunity to vote independently, with this equipment they
11 will. And we see this as an investment to augment the
12 current voting system we have in our county to allow those
13 individuals who have not had that opportunity to vote that
14 right to vote, as they should have.

15 And with that, I would like to see the Secretary
16 of State's office give assurance to local registrars that
17 this equipment does meet those federal requirements as such
18 that we don't see a dime from the state or federal
19 government. We occasionally get -- well, what we've seen
20 here is probably one an opportunity to tap into some state
21 bond monies for a one-time opportunity and some federal
22 monies sort of trickle down to the local level to help us
23 manage the cost at the local level, which has fallen almost
24 entirely on local county boards.

25 But that said, the bigger issue is the right for

1 all citizens of our country to have equal access to voting,
2 our disabled community currently does not. This equipment
3 will allow them to vote independently. We're specifically
4 looking at this equipment to augment our current paper-based
5 system to allow individuals that right to vote.

6 Thank you.

7 CHAIRPERSON MCDANNOLD: Thank you.

8 Following Jon Barrilleaux will be Shirley Howland.

9 Is Shirley Howland here? Thank you.

10 MR. BARRILLEAUX: My name is Jon Barrilleaux and
11 I'm a citizen of Alameda County.

12 The Secretary of State had a series of editorials
13 and advisories, went on the record regarding the inadequacy
14 of the current paper receipts, of which the Diebold system
15 is a prime example. It's a skinny paper strip with very
16 small type and lacks durability.

17 SB-370 has been signed into law and must be put
18 into practice. I urge you to reject certification of the
19 Diebold AVVPAT on the grounds that it does not satisfy the
20 intent of SB-370 with an AVVPAT suitable for audits and
21 recounts.

22 Thank you.

23 CHAIRPERSON MCDANNOLD: Thank you.

24 (Applause.)

25 CHAIRPERSON MCDANNOLD: Grace Cooper. Is Grace

1 Cooper here? Grace will be next.

2 MS. HOWLAND: Good afternoon. I'm Shirley
3 Howland, I'm from Lake County which is another poor district
4 in Northern California, compared to Marin County, and I'm
5 going to speak on somewhat the same things that the
6 gentleman from Marin County did.

7 Not too long ago I attended a meeting of our
8 County Board of Supervisors in which they were talking to
9 the Registrar of Voters about the costs of installing all of
10 this new technology. Lake County has been using paper
11 ballots for umpteen years and they seem to be very adequate
12 and satisfactory. People that have disabilities are allowed
13 to take a friend, a trusted friend, into the booth with them
14 to help them vote. I believe that that's the way it works
15 with paper ballots.

16 And I'm speaking in favor of staying with the old
17 fashioned way. It's very expensive apparently, especially
18 for poor counties like ours, to install all this new
19 equipment. I think this is something in the area of
20 \$70,000, which the registrar of voters said we did not have
21 and the Board of Supervisors agreed.

22 I don't understand the rush to technology. I love
23 computers, I play with the computer all the time, but there
24 are many people in Lake County that don't use computers and
25 find that very difficult to do so.

1 MS. INGRAM-KELLY: Thirty seconds.

2 MS. HOWLAND: I guess that the reason we went to
3 computers was the federal government or the state government
4 is insisting on putting out these new machines was because
5 that the count would take less time. I know that people
6 counting votes did so till 1:00 or 2:00 o'clock in the
7 morning sometimes in Lake County which is a population of
8 only 50,000 people.

9 MS. INGRAM-KELLY: Time.

10 MS. HOWLAND: Yes. I don't think it would take
11 any more time than the Presidential elections did in 2000
12 and 2004.

13 CHAIRPERSON MCDANNOLD: Thank you, Ms. Howland.

14 (Applause.)

15 CHAIRPERSON MCDANNOLD: Flo Horton will be
16 following Ms. Cooper.

17 MS. COOPER: Good afternoon, my name is Grace
18 Cooper. I am a citizen of the state of California having
19 lived here since 1952 and in Sacramento County since 1955.

20 I have worked on seven or eight elections here in
21 the County of Sacramento as an inspector. I am not a
22 computer expert, a programmer, you have heard enough of
23 that, and it's way too complicated for me. I do use
24 computers all the time and I appreciate their benefits, they
25 are wonderful things. But I think regardless of questions

1 about source codes or hackers or any of that, if, as it is
2 apparent to me, in order to get an honest and fair election,
3 we are apt to have to have paper ballots and have them
4 counted possibly at the precinct or the polling place first,
5 and then transmit it to the central counting place, if
6 that's the only way we can be sure that we aren't being
7 hacked or fooled with and we don't have fraudulent votes.
8 Maybe we should just forget about buying all of this very
9 expensive equipment because if we have to do it with paper
10 and pencil, we know how to do that, let's go back to doing
11 it.

12 It costs thousands and thousands of dollars to buy
13 this stuff and I honestly think we're going to be
14 questioning the results from now until the end of time
15 because of what has gone on before. I do not question the
16 registrar of voters in this county, I have never seen
17 anything I felt was in the least bit funny going on at any
18 of the polling places where I work. I do not question the
19 judgment of these ladies and gentlemen, but I do question
20 what goes on at Diebold or goes on with Walt O'Dell, and I
21 just think we would be absolutely insane to put our money
22 into this equipment or probably any other electronic
23 equipment if we're going to have to count it anyway with
24 paper and pencil. Let's go back to that.

25 Thank you very much.

1 (Applause.)

2 CHAIRPERSON MCDANNOLD: Following Ms. Horton will
3 be Diana Madoshi.

4 MS. HORTON: Hi, I'm Flo Horton and I'm a private
5 citizen of California, and Sacramento County and City.

6 Thank you, Mr. McDannold, for sharing earlier and
7 Mr. Freeman, I really did appreciate that.

8 You mentioned, and I'm not trying to debate you,
9 but you mentioned something about the San Diego testing.
10 And I have heard that that was just sort of a Diebold in-
11 house testing and that there really wasn't an accurate
12 presentation of a real testing, but you called it robust and
13 graceful. And I work on the polls too here in Sacramento,
14 two of them, because, you know, when we started having
15 problems I wanted to go out there and see what was going on.
16 And I was very happy here in Sacramento county, very
17 honored, to be doing that work. What I found was robust and
18 what I found that was graceful was an 85-year-old woman who
19 came out to vote. She told me that she had been cooking for
20 her family since she was seven and she was going home to
21 cook, and many people like her and the first time voters
22 too.

23 When we finished up that night and the gentleman
24 that was here a little bit earlier, he explained the
25 process, how we did that, we counted them. It was just as

1 he said, we had to run for the disabilities, had the puff,
2 the whole thing. There was one machine there and it's very
3 expensive and we had one person use that, and we were glad
4 about that. I'm very honored to do that work.

5 I cannot say that California will stay clean if we
6 get Diebold here. It's easier to stay clean than it is to
7 get clean and I'm asking you, please, I'm begging you,
8 please do not bring Diebold, and not just for my county, I
9 don't want to hear that it's in San Diego County. I don't
10 want to hear that it's in San Joaquin County, and, oh,
11 everything is okay in my county, I can go home because I did
12 the right job. But then in some other county, you know,
13 they're getting stuck. So please, I beg you, if it was my
14 last words today, I beg you, please, do not bring Diebold
15 here.

16 (Applause.)

17 CHAIRPERSON MCDANNOLD: Following Ms. Madoshi will
18 be Kathleen Harness.

19 MS. MADOSHI: Thank you. I'm Diana Madoshi from
20 Placer County.

21 The goal of activists like myself, and I didn't
22 really become an activist as far as voting until 2000, the
23 year 2000, as I watched our country go through that turmoil
24 of the Presidential election. And as I've listened and
25 heard more and more stories that was coming out of Florida

1 about the machines and the whole thing, I became more and
2 more determined to be involved about the integrity of
3 voting, especially for people who have been marginally
4 disenfranchised.

5 I spoke here in June. I'm here again. I am
6 amazed here we are in November continuing to deal with
7 Diebold.

8 Voters' confidence should be one of the goals,
9 primary goals, of the Secretary of State. And I know it's
10 the goal of all of us here. Without voters' confidence, you
11 will have voter apathy. With voter apathy you won't have a
12 democracy worth anything.

13 I've voted since I was eligible to vote. I want
14 that vote as confident for my grandchildren. Having a
15 system that does not have the integrity, that has -- and
16 using a consultant from questionable states like Florida and
17 Georgia, if it's true, is unconscionable for me too.

18 What I do want to state to you, I urge you not to
19 certify Diebold. We don't want a system that has been so
20 connected with fraud, we don't want a system that a lot of
21 you say go on-line. There are a lot of people that do not
22 have computers, but I did just a poll among some of the
23 seniors that I knew and some of the other people in my
24 community. You say Diebold, they say why vote.

25 Do you want to really assign to a lot of citizens

1 in our state that they would become more apathetic to
2 voting. If you want to ensure voters' confidence and have
3 voters become involved, you must not certify this equipment.
4 You must care about the residents of California and give
5 them the vote of confidence in --

6 MS. INGRAM-KELLY: Thirty seconds.

7 MS. MADOSHI: -- equipment that is not tainted by
8 fraud.

9 (Applause.)

10 CHAIRPERSON MCDANNOLD: Following Ms. Harness will
11 be Ruth Hoch.

12 MS. HARNESS: Okay. I'm from Lake County.

13 First of all, I didn't see this meeting announced
14 anywhere. I have been looking on the website and I kind of
15 gave up. So if you put it on there yesterday, I apologize.
16 But I found out at 11:00 o'clock last night and my friend
17 and I drove from Lake County, we left at 5:00 o'clock to be
18 here, because I was here at the first meeting, as the
19 previous speaker was, and we were asking the same thing. At
20 that time, we asked that you not certify the Diebold system.
21 The room was full of citizens that did not trust Diebold the
22 last time. We still don't believe them. Why the rush to
23 certify it when paper methods can work.

24 That's all I have to say.

25 (Applause.)

1 CHAIRPERSON MCDANNOLD: Next up will be
2 following -- is Ruth Hoch here? Sarah Rath.

3 Following Sarah will be Joan Quinn.

4 MS. RATH: Hello, I'm Sarah Rath with Citizens Act
5 and California Election Protection Network.

6 I agree with someone who says that we're being
7 forced to address the technology when we haven't agreed to
8 the vendor, the company.

9 Why shouldn't we trust Diebold? Well, for
10 instance, some of the largest investors in ES&S, Sequoia and
11 Diebold are the big contributors to the Republican campaign.
12 Most notably are the defense contractors Northrup Grumman,
13 and none of them are politically neutral and all have high
14 stakes in the construction of e-voting systems.

15 Diebold serves Diebold. Two excerpts from the
16 Diebold employee manual now in use, quote, "Irrespectively,
17 we must always promote the consistency and accuracy of our
18 voting systems." Here's another one, "Do not offer damaging
19 opinions of our systems even when their failings become
20 obvious."

21 Another point is that it's the law. 19205 of our
22 California Election Code holds that the criteria for
23 establishing the specifications and regulations shall
24 include Item C, the system shall be safe from fraud or
25 manipulation. The system isn't safe. You have all kinds of

1 testimony all day long, listening to testimony that proves
2 the system isn't safe. Diebold systems are not safe. They
3 were supposed to be fixed and they weren't fixed.

4 The TSX 4.6.3 when it blew up in San Joaquin, the
5 4.6.4 was submitted in California for certification, but it
6 was not certified federally at the time, and I understand
7 that federal certification comes before state certification.
8 So it seems like there's a problem with the process.

9 Well, I guess finally I just have to admit that it
10 all looks really pretty, the e-voting machine, up front all
11 locked up good and tight, but the back door won't close, the
12 roof leaks, the windows are cracked, the shutters are half
13 off, and there's a storm coming, a big one, maybe a
14 hurricane. So at this point we have to say no to Diebold.

15 By the way, there are many ways to censor the
16 public.

17 Thank you.

18 (Applause.)

19 CHAIRPERSON MCDANNOLD: Following Joan Quinn will
20 be Eve Roberson.

21 MS. QUINN: Good afternoon. Before my two minutes
22 start, I want to thank you for reidentifying yourself. I
23 was the one that asked you to do that since there was such a
24 long line to get in. I didn't hear your function.

25 And even though you identified yourself, I still

1 don't know the function of this panel. The citizens are in
2 the dark and I have to thank Ms. Katz for raising one
3 question. I understand, is it correct, that the VSP Panel
4 has been disbanded? And I would like to know, citizens are
5 in the dark, we have a right to know. This is a public
6 hearing, we know what your positions are, but what is your
7 function sitting here today? I've got no idea. I too have
8 attended these hearings. By e-mail we were supposed to get
9 notifications, we filled out a card about when the next one
10 was going to be, and they have been continually changed.
11 We're in the dark. We know you've identified what you do,
12 but what is your function here today? To make
13 recommendations to Bruce McPherson or what? None of us
14 know.

15 PANEL MEMBER KANOTZ: The purpose for this hearing
16 is for everyone here to give their views on the Diebold --

17 MS. QUINN: Excuse me, I didn't ask what the
18 purpose of this hearing was, I asked what is your function.

19 PANEL MEMBER KANOTZ: I would like to finish,
20 please.

21 PANEL MEMBER CARROLL: Excuse me, you asked him a
22 question, if you could let him finish.

23 MS. QUINN: Okay. Just answer my question,
24 please.

25 PANEL MEMBER KANOTZ: The decision is made by the

1 Secretary of State on whether to certify the system, and
2 that has always been the case. It's required by the
3 Elections Code that the Secretary certify the software --

4 MS. QUINN: I'm an attorney and I don't understand
5 that. What is your particular function, each one of you
6 sitting up there? Instead of the VSP Panel, what has -- has
7 it been disbanded? What is your function? Please don't
8 tell me, I know you're to hear testimony on Diebold. What
9 is your purpose sitting up there each one of you?

10 CHAIRPERSON MCDANNOLD: I will attempt to answer
11 it.

12 MS. QUINN: Thank you.

13 CHAIRPERSON MCDANNOLD: As I made earlier the
14 comment, we are not here today to engage in debate, we are
15 here to receive your comments on behalf of the Secretary to
16 pass those comments and relay those comments on to the
17 Secretary of State. To my knowledge, the Voting Systems
18 Panel does not currently exist. The Voting Systems Panel
19 was never required under California law.

20 MS. QUINN: And to your knowledge it no longer
21 exists? That's the first time that there's been a statement
22 on the record to that at all, and we as citizens have a
23 right to know.

24 Thank you for answering that question. We have a
25 right to be enlightened.

1 The purpose of Diebold and other voting equipment
2 is an unconstitutional delegation of public rights to
3 private companies interfering with the constitutional right
4 to vote and to have that vote count.

5 MS. INGRAM-KELLY: Thirty seconds.

6 MS. QUINN: No, we didn't start my two minutes
7 asking about the Panel, we're starting it now.

8 MS. INGRAM-KELLY: Oh, no, ma'am, I'm sorry.

9 CHAIRPERSON MCDANNOLD: Ms. Quinn, we beg to
10 differ.

11 MS. QUINN: Since the federal court in Manhattan
12 found the public's right to torture voters was more
13 important than claims of national security in aiding and
14 abetting the insurgency and the terrorists getting new
15 recruits, how is it possible that it became a claim of
16 business privilege --

17 MS. INGRAM-KELLY: Time.

18 MS. QUINN: -- for rights to voting machines which
19 control the constitutional right to vote.

20 CHAIRPERSON MCDANNOLD: Ms. Quinn --

21 MS. QUINN: But essential to allow the public
22 right to have access to and review and study these
23 machines --

24 CHAIRPERSON MCDANNOLD: Ms. Quinn. Ms. Quinn.

25 MS. QUINN: -- is a violation of the California

1 constitution. No longer is the one question that is --

2 CHAIRPERSON MCDANNOLD: Ms. Quinn.

3 MS. QUINN: -- to be decided and --

4 AUDIENCE MEMBER: Excuse me, point of information.

5 Sir, the question that Ms. Quinn asked earlier
6 which could have been asked under a point of information, I
7 think a lot of people in this room would like answered. So
8 it doesn't fall within the two-minute period. Her statement
9 in the beginning was a reasonable statement.

10 MS. QUINN: Mr. McDannold, you did not deny my
11 request. I stated when I first got up here, I said I don't
12 want my two minutes to count because I'm asking you what you
13 guys are doing, something that we don't know. You did not
14 deny that.

15 CHAIRPERSON MCDANNOLD: Please finish your
16 statement Ms. Quinn.

17 MS. QUINN: Okay, I will finish my statement.

18 CHAIRPERSON MCDANNOLD: I will give you another
19 minute.

20 MS. QUINN: To understand the question that
21 disclosure is the savior and secrecy must be proven as a
22 necessity. There is no necessity for secrecy here. Diebold
23 could request a privilege and a pledge of nondisclosure to
24 those testing certification. Any business privilege is
25 waived by Diebold when Diebold allowed a subcontractor to

1 work with two of Diebold's competitors, a subcontractor that
2 Diebold claims had been mitigating Diebold's competitors
3 confidential Diebold information. There is no privilege
4 here.

5 Reports today showing hacking and fraud in the use
6 of Diebold machines have not been denied. The only response
7 has been that the registrar of voters and election workers
8 are loyal outstanding citizens who should not be criticized.
9 Trust me from the government is no longer an answer.

10 And I don't mind clapping in between people here.
11 I appreciate your statement that the stenographer needs to
12 be able to hear the statements and please don't interrupt
13 the statements because that could be happening. But my
14 grandsons are here and I want them to learn that in a public
15 hearing the citizens are not required to sit silent and
16 passive.

17 Thank you.

18 (Applause.)

19 MS. ROBERSON: Mr. Chairman and Members of the
20 Committee.

21 CHAIRPERSON MCDANNOLD: Ms. Roberson.

22 MS. ROBERSON: Yes.

23 CHAIRPERSON MCDANNOLD: One moment.

24 Next up will be Robert Weber.

25 MS. ROBERSON: I'm Eve Roberson, Santa Rosa,

1 California. I'm a retired election administrator of many
2 years. I'm also a member of the Election Assessment Hearing
3 Panel.

4 And I'm dismayed at the manner in which this
5 public hearing is being held today. Very little notice was
6 given to the public of the hearing and on certification of
7 the electronic voting system that will be allowed to count
8 our votes, with little or no oversight and no verifiable
9 paper trail.

10 I'm dismayed also that while the previous public
11 hearings for this very issue were held under the auspices of
12 the Voting Systems and Procedures Panel, which we now are
13 told today has been disbanded by the Secretary of State, and
14 in its place he has placed staff members to come and to
15 simply take testimony, and that it's recorded mechanically.

16 And I'm more than dismayed that the subject of
17 this hearing is Diebold, which is a company which has been
18 previously denied certification by the Secretary of State
19 because it has not even met the minimum standards for
20 election integrity.

21 The public hearing is not even being attended,
22 acknowledged by the Secretary or State who seems to be bent
23 on making this decision in favor of Diebold.

24 This is disrespectful of the citizens of
25 California and their right to open and verifiable elections.

1 Diebold is not able to provide election integrity and they
2 must not be certified by the Secretary of State as a result
3 of this questionable public hearing.

4 As a retired election administrator of many years,
5 I urge you today to reject Diebold's certification.

6 I could please answer any questions you may have.

7 (Applause.)

8 CHAIRPERSON MCDANNOLD: Robert Weber? Paula
9 Woodward. Following Ms. Woodward will be Kim Alexander.

10 MS. WOODWARD: Hi, my name is Paula Woodward, I'm
11 a citizen of the state of California.

12 I appreciate everybody coming and being here and I
13 really urge you to not allow Diebold systems into our state,
14 to stand up for our democracy. And it's just been appalling
15 for me today that to see citizens beg for the right to keep
16 a company out of our voting systems.

17 Thank you.

18 (Applause.)

19 CHAIRPERSON MCDANNOLD: Following Ms. Alexander
20 will be Valerie Hastings.

21 MS. ALEXANDER: Good afternoon. I'm Kim
22 Alexander, President of the California Voter Foundation.

23 I had some concerns about comments made at the
24 beginning of this hearing about the status of the procedures
25 that Diebold submitted which I have reviewed on the

1 Secretary of State's website. I think I heard Bruce
2 McDannold say that the procedures are still in draft form
3 and not in final form.

4 I want to make sure that there is ample
5 opportunity to look at the final procedures before the
6 Secretary of State considers certification.

7 There are a couple of particular items that need
8 to be considered in the procedures. One is the use of bar
9 codes, we need to make sure it's in the procedures that bar
10 codes cannot be used. So that's one area we already know
11 they need to be improved.

12 Another deals with a one percent manual count.
13 The staff report says that the system has complied with that
14 Election Code Section 15360, but to my knowledge Diebold has
15 not produced any kind of a scrolling device or specific
16 procedures that would explain exactly how the reel-to-reel
17 paper audit trail is going to be used in a one percent
18 manual count. Now it does say that it must be used, but it
19 says that it will up to the counties to decide what those
20 procedures will be. So they're not specific enough.

21 The testing that was conducted in San Diego took
22 place prior to the enactment of SB-370. So it's
23 understandable why they may not have concluded that in the
24 test, but now that SB-370 is the law, now that we know that
25 the voter verified paper audit trail must be used for the

1 one percent manual count, I strongly recommend this office
2 to conduct at least one more additional test of the system,
3 you can use the existing voter verified paper audit trails
4 from the San Diego test and do a mock run of the one percent
5 manual count. You can use the preexisting paper audit
6 trails that you have. But we need to know in reality and
7 not just in theory that it is feasible for the voter
8 verified paper audit trails to be used successfully to
9 perform the one percent manual count.

10 MS. INGRAM-KELLY: Thirty seconds.

11 MS. ALEXANDER: And the specific areas of the
12 procedures that I'm looking at are in sections 8.6 and
13 section 9. So I would be happy to work with the Secretary
14 of State staff further on that and I will submit some of
15 this in writing too as well.

16 Thank you.

17 (Applause.)

18 CHAIRPERSON MCDANNOLD: Valerie Hastings. Barbara
19 Goodwin. Following Ms. Goodwin will be Julia Craig.

20 MS. GOODWIN: Hello, I'm Barbara Goodwin. I live
21 in Mountain View.

22 In our community of Mountain View, I saw a sign at
23 election a couple times ago, a couple elections ago, it said
24 don't vote, the fix is in. I saw that in Chicago years ago
25 too.

1 People know. I mean not just technophiles, but
2 people know out there that this system that we have is
3 eroding, and Diebold is eroding even faster. I think with
4 Diebold it's just a better system, a more efficient way to
5 cheat. That's my take.

6 Anyway, I hope you people do not certify these
7 people. You talk so strongly and so beautifully and so
8 patriotically about let's promote voter confidence. Well,
9 voter confidence, if you've really been out there, you know
10 it's not good.

11 So once again, don't certify them.

12 Thank you.

13 (Applause.)

14 CHAIRPERSON MCDANNOLD: Thank you.

15 Following Ms. Craig will be Sandra Yolles.

16 MS. CRAIG: My name is Julia Craig, I'm a citizen
17 of Berkeley, California.

18 I came here to support everybody that says do not
19 certify Diebold. People out there in the world do not
20 believe that these voting machines are honest. The recent
21 results from Ohio make it extremely clear that they are not
22 honest. Please let us go back to paper ballots and have
23 people help disabled people vote and tell us that you are
24 sure that you're doing this so that voters have confidence
25 in the honesty of the system.

1 Thank you.

2 (Applause.)

3 CHAIRPERSON MCDANNOLD: Following Ms. Yolles will
4 be Gail Sredanovic.

5 MS. YOLLES: Hi. This whole thing is kind of
6 mixed up. I think this whole thing is kind of mixed up. I
7 think the Secretary of State's office should be
8 representative of people and we all have a kind of a feeling
9 that the corporation has a lot of weight and the people are
10 here pleading for something. So there is something very
11 scrambled up about that.

12 I brought with me an article from the Toledo
13 Parade that describes a lot of meltdowns in the recent Ohio
14 November election 2005. Polls that opened late, machines
15 that were broken, technicians that didn't show up. There
16 were a lot of other quotes about votes that took all night,
17 thirteen and a half hours, to count in many precincts. So
18 when the Diebold representative said it was a big success,
19 he got a laugh from the audience because we're reading
20 different kinds of press accounts.

21 So I wonder, you know, the things cost hundreds of
22 millions of dollars, and are they supposed to be more
23 efficient? Are they supposed to be easier to use, or are
24 they supposed to be more secure or more trustworthy or
25 easier for pollworkers or easier to count or less expensive?

1 Is Diebold less expensive than any other options? And, you
2 know, all of the answers to these questions are no, as far
3 as I'm aware. So, you know, I ask again why are we doing
4 it?

5 And I also was impressed by Steve Freeman saying
6 we're working with them over security. Well, let's work
7 with them for a few more years and if we come out with a
8 system that works, we'll use it, you know. I mean they have
9 research and development, let them work on the system, so
10 when it becomes secure, that's the time to use it.

11 Also the recent GAO report here that everybody
12 knows about, I think really tells us that there is some
13 serious problems with electronic --

14 MS. INGRAM-KELLY: Thirty seconds.

15 MS. YOLLES: -- voting in America.

16 Thank you.

17 (Applause.)

18 CHAIRPERSON MCDANNOLD: Following Ms. Sredanovic
19 will be Carol Bailey.

20 MS. SREDANOVIC: Hi, I'm Gail Sredanovic and I'm a
21 voter in San Mateo County.

22 And I take a back seat to no one, no one, as an
23 advocate for the disabled. I was on crutches and dependent
24 on a wheelchair for ten years before I had three surgeries.
25 And I am here to tell you that nobody, nobody, has complete

1 independent access to the trains, to the busses or to the
2 doors. The doors of this hearing room are not fully
3 disabled accessible.

4 So would it be reasonable for me to say that there
5 should be no doors, there should be no busses? No. I just
6 wanted to ask for a reasonable level, and believe me that
7 was hard enough, and you can ask the Director of Public
8 Works for San Mateo County whether I was persistent
9 advocating for the physically and the visually disabled.

10 Secondly, I would like to mention that to give all
11 the disabled a hundred percent independent access, not just
12 access but like access without any assistance at all, but
13 you destroy the credibility of the voting system is like
14 giving somebody the keys to a car that has no motor. I mean
15 it's great. So why would I as a disabled person want access
16 to a voting system that is not verifiable and not reliable.

17 And if you think that Diebold can be trusted, I
18 advise you to take a look at the film made by Dorothy
19 Federman who is also a mental health resident and when she
20 interviews voter after voter after voter whose votes were
21 flipped in Ohio. And I think a company with this kind of
22 track record totally can't be trusted.

23 And if the alternative to this kind of system is
24 not hanging chads and it's not a punchcard. There is an
25 alternative, a very viable alternative, and by the way San

1 Mateo County has not fallen, it has not been snookered, and
2 we use optiscan. Now, would it be preferable if they
3 counted them at the precinct level before they shipped them
4 off, which they don't. So it could be modified. It is
5 being modified, cheap and simple. So why do you go for
6 something as complex --

7 MS. INGRAM-KELLY: Thirty seconds.

8 MS. SREDANOVIC: -- when something that is cheap
9 and simple is available.

10 So I urge you not to certify it. And also to take
11 seriously the opinions of all the computer experts who are
12 here today as opposed to advocates for the company. If
13 you're going to buy a car, who do you listen to, Consumer
14 Reports or an automobile salesman? And if you are going to
15 take a drug, who do you listen to, the scientist or the --

16 MS. INGRAM-KELLY: Time.

17 MS. SREDANOVIC: -- salesman for the drug company.

18 Thank you.

19 CHAIRPERSON MCDANNOLD: Thank you.

20 (Applause.)

21 CHAIRPERSON MCDANNOLD: Following Carol Bailey
22 will be Jerry Bailey, or neither Bailey. Is there a Carol
23 or Jerry Bailey present?

24 Sharon Graham. Following Ms. Graham will be Sally
25 Sommer.

1 MS. GRAHAM: Good day, my name is Sharon Graham, I
2 live in Sacramento.

3 And like others here today, I've been a little
4 puzzled. I'm having trouble determining whether this is
5 farce or scam.

6 And a couple other things have been running
7 through my head. One was I was wondering how many banks
8 would buy an ATM machine that didn't give their customers a
9 receipt or didn't accurately record the transaction on their
10 statement. I understand Diebold's in that business and I
11 don't think they would be in business very long if that's
12 what they produced.

13 I've been reminded of an old TV show. It was
14 called Candid Camera. They went around in different kinds
15 of skits and recorded odd situations, and one of the most
16 memorable ones was of a woman who drove into a gas station.
17 Then they were called service stations, because that's what
18 they gave actually service. They pumped the gas, washed
19 windows, checked the oil, tires, whatnot. They were
20 oftentimes high school young men or college students.

21 So the gas station is at the bottom of an incline
22 or hill, so it comes to a stop at the gas island there and
23 the fellow comes out and asks the woman what she wants and
24 starts pumping the gas and washing the windows. Then he
25 opens the hood up and he kind of scratches his head and he

1 looks around here and there, and he said, lady, how did you
2 get in here, there's no engine.

3 That's how I have been feeling. I have been
4 trying to open up the election and there is no vote. So
5 where did it go? It's just disappeared. Scam or farce.

6 Thank you.

7 (Applause.)

8 CHAIRPERSON MCDANNOLD: Following Sally Sommer,
9 Arturo Colmenarez. Thank you.

10 MS. SOMMER: Yes, I'm just wondering, you know,
11 who it is that's responsible to make sure that we have fair
12 elections. Who represents me? When voting machines came on
13 line personally I started using absentee ballots and I did
14 not trust them. I'm sure I'm not alone, as I learn more and
15 more about the machines and realize that there were various
16 levels of vulnerability in these machines. And then I find
17 out there is no one there for the voters to be able to
18 examine, to have some security specialist on behalf of
19 voters to make sure that they have not been infiltrated, no
20 fraud, no whatever.

21 Maybe this is under Ms. Carroll's purview, I don't
22 know. I mean who's looking out for us. For a company to
23 offer us machines to vote on that we can't fully examine
24 seems like a no-brainer to me. We need to fully examine
25 them.

1 Thank you.

2 (Applause.)

3 CHAIRPERSON MCDANNOLD: Following Mr. Colmenarez
4 will be Mimi Kennedy.

5 MR. COLMENAREZ: Hello, my name is Arturo
6 Colmenarez, and with the exception of a few people, I'm very
7 proud to be a part of this group.

8 And I'm here for many reasons, mainly my children.
9 And with my wife's support, I would like to say the
10 following things. I would also like to ask a rhetorical
11 question. What could possibly be more important for Bruce
12 McPherson not to be here. Is he out on the golf course with
13 some executives or where could he be, what could be more
14 important.

15 Anyway, I'm not a programming expert, but I do
16 know that different colored arrows or any other kind of
17 superficial upgrade to any of Diebold's systems is not going
18 to give me the confidence that I need as a voter. Wylie and
19 Cyber can do all the testing they want and give a passing
20 grade to any one of their systems, but the fact remains that
21 they cannot test Diebold or their employees for integrity,
22 and I think that's what the big issue is here.

23 Mr. McDannold has brought up many actual features
24 of the new and improved and the latest and greatest of the
25 Diebold machines or what they possess, however, the fact

1 remains that propriety entities such as Diebold which will
2 hide behind their industry secret status has no business
3 counting votes.

4 I will never trust any company that employs the
5 nontransparent software that Diebold is trying to sell us.
6 No amount of testing or improving or reports from experts is
7 going to give me the piece of mind I need when I cast my
8 vote. You cannot sit here and ask me to trust you because I
9 really shouldn't have to. I really shouldn't have to trust
10 anybody. I should just know that the system is a good
11 system, a transparent system, that doesn't need to be
12 questioned.

13 My family has adopted SOS as an acronym, which of
14 course stands for save our ship. It also stands for
15 Secretary of State. But in our case, it stands for save our
16 state.

17 Bruce McPherson and Conny McCormack and anybody
18 else pushing for the use of these illegal machines, in my
19 opinion illegal, should be investigated and exposed. They
20 are poised to spend millions of our taxpayer dollars on
21 illegal machines which I feel jeopardize the future of our
22 democracy --

23 MS. INGRAM-KELLY: Thirty seconds.

24 MR. COLMENAREZ: -- as we know it.

25 I've heard that this hearing was a sham and we'll

1 find out in the following days just how much of a sham it
2 is. And maybe it's your integrity or lack there of which we
3 really need to find out about.

4 Please do not certify Diebold, they do not deserve
5 it. The citizens of California deserve better.

6 (Applause.)

7 CHAIRPERSON MCDANNOLD: Following Ms. Kennedy will
8 be Patrick Connally.

9 MS. KENNEDY: My name is Mimi Kennedy with
10 Progressive Democrats of America and also California
11 Election Protection Network. I'm a granddaughter of a
12 Republican district attorney from upstate New York, I know
13 politics well and I know what democracy requires is a fair
14 fight and that is what is at stake here.

15 Others have spoken better than I to the
16 suitability of these machines. I think under California
17 Code that these machines do not meet that requirement for
18 certification.

19 It was mentioned that human error was responsible
20 for some of the mistakes in the testing, and God knows human
21 error will be at play in every election when volunteer
22 pollworkers are the ones who have to manipulate these
23 machines. And human error plus a computer equals a glitch
24 that can take hours to fix. Therefore, these machines are
25 not suitable for their intended use. The security issue has

1 been well remarked here. The tests show a lack of
2 confidence in the code as well, and the certification of
3 these machines have not met that requirement, their tests
4 have not obviously enhanced our confidence.

5 I'm struck by the fact that the young people,
6 people often say, well, the elders, they all want to go back
7 to the old ways. The young people are comfortable with
8 computer technology. The young people are all working or in
9 school trying to make ends meet and we their elders have
10 come on our own nickel to this public hearing because we're
11 trying to protect our young. And I wanted to make that
12 point, because otherwise one might say, oh, it's just a
13 bunch of old people who want to stick with the old ways.
14 We're trying to protect our children's future here.

15 I would just as soon wait. I feel there has been
16 a lot of wasted effort in trying to comply. I would almost
17 like to thank Diebold for trying to comply with the
18 provisional vote and the new test for trying to comply with
19 the voter verified paper audit trail, but it really is like
20 deck chairs on the Titanic.

21 Open source code is coming and we should save our
22 money for that, because there's a hope that that would be
23 transparent and that might ease the problems in this
24 jurisdiction such as Los Angeles. I have been so
25 sympathetic with problems of running voting in big

1 jurisdictions like mine that I have looked at some disabled
2 compliant equipment. The very last reason why this
3 certification might possibly have been desirable in going
4 forward would be disabled access. We are under the gun.
5 The Attorney General could sue California for not being HAVA
6 compliant by January '06. This is not compliant with
7 disabled access.

8 MS. INGRAM-KELLY: Thirty seconds.

9 MS. KENNEDY: So that's it. And let's save our
10 money, I hate to see waste. I hate to see the wasted effort
11 in human talent and resources, good intentions, and even
12 Diebold's corporate energy. But we must not certify
13 Diebold, there is no reason to certify this system.

14 Thank you.

15 (Applause.)

16 CHAIRPERSON MCDANNOLD: Following Mr. Connally
17 will be Sherry Healy.

18 MR. CONNALLY: Hi, my name is Patrick Connally and
19 I'm here today at the request of the Marin County Registrar
20 of Voters. Usually I'm on the other side. I have been a
21 litigant in ADA cases.

22 I'm here because people with disabilities have a
23 right to vote and you have a really hard time of ensuring
24 that we get to vote in the next election.

25 The County of Marin has bought AccuVotes. I was a

1 chief inspector for a number of years when those were put
2 in. One of the biggest complaints is people are afraid of
3 technology, and the system which was bought from Global
4 works.

5 I don't think anybody here likes Diebold, but, you
6 know, after watching Michael Moore's movie and I'm not
7 really hot on General Motors either. But we're discussing a
8 piece of equipment and the software that goes with it and I
9 think people have to raise valid concerns. And I wish you
10 would take that into consideration. But I also think to
11 invest a lot of machines and stuff and any certification
12 should include a way for counties to upgrade and to be able
13 to add onto that system, whether it's Diebold or another
14 company or whoever.

15 I would also propose that maybe the Secretary of
16 State should put up \$200,000 and see if somebody can hack
17 the system and pay \$200,000 if they can accomplish that to
18 see if the system works.

19 (Applause.)

20 CHAIRPERSON MCDANNOLD: Thank you. Following Ms.
21 Healy will be Deborah Hensch.

22 MS. HEALY: Hello, I'm Sherry Healy from the
23 California Election Protection Network, which is a
24 nonpartisan organization of over 25 groups across California
25 coming together to achieve our mutual election integrity

1 goals.

2 And I want to enter into the record today a
3 compendium of our seven reasons not to certify Diebold. And
4 I have to say I don't have a lot of confidence that our
5 transcript will be read. Nothing personal against the group
6 here, I know you all have been paid to come here, but just
7 like the AVVPAT by Diebold which is strictly the bare
8 minimum to comply with the law, the Panel also seems like
9 the bare minimum to comply with the public hearing condition
10 of certification. Is the bare minimum fair and balanced?
11 Perhaps in the Fox Network sensitive phrase. Fighting
12 words, perhaps, but it is a fight for the preservation of
13 democracy, a democracy that is nonpartisan and for which
14 many people have given their lives.

15 We do not appreciate the product endorsement on
16 the back of the agenda with people who are not election
17 technologists and the agenda should be comprised of election
18 -- which is our Secretary of State's office, and I will
19 leave this up here to be entered into the transcript.

20 Thank you.

21 (Applause.)

22 CHAIRPERSON MCDANNOLD: Following Ms. Hench will
23 be Sherry Reson.

24 MS. HENCH: I'm Deborah Hench, Registrar of Voters
25 for San Joaquin County, and I'm also a TSX county. I ran a

1 TSX election in the primary 2004 and believe it or not we
2 didn't have any problems. I know you won't believe that
3 according to the people here.

4 I have followed and been at all these meetings,
5 and I also have attended and helped put on the volume
6 testing for the TSX in San Joaquin County and was an
7 observer for the San Diego County volume test.

8 And I can tell you that first of all, San Diego
9 was ran by the Secretary of State's office. They hired
10 people to run the test and they were there overseeing it.
11 In our county it was volunteers from other county
12 registrar's offices and there were more than a hundred
13 people at probably both locations.

14 You know, it was a good old test run in our
15 county, it didn't come up to the standards that the
16 Secretary of State's office wanted, and therefore we went to
17 San Diego after Diebold went and made the modifications.

18 I have the highest regard for the Secretary of
19 State's office and testing. And in that same vein, I have
20 high regard for the registrars of voters throughout the
21 nation. We do our best to have the best elections that can
22 be performed. And it doesn't matter whether it's paper or
23 electronic, you're still entrusting us with your vote. And
24 we are the ones who are responsible for the security and for
25 making sure of an accurate count.

1 We also have election observation panels before
2 every election that comprise either the grand jury or a
3 combination of the concerned citizens of political parties,
4 and they in turn check to see that our machines or equipment
5 are testing correctly. And for that, we all must do that.
6 And I, along with 15 other county registrars, signed a
7 letter and submitted it asking for certification on the
8 Diebold system.

9 We need this system. It is a good accurate
10 system. Now, you may question that, but I do not, I have
11 worked it. My staff is the one --

12 CHAIRPERSON MCDANNOLD: Ms. Hench, excuse me.

13 We've asked before, please extend the courtesy
14 that Ms. Hench has extended to other speakers by not
15 interrupting or not talking over her. Thank you.

16 MS. HENCH: We, in fact, are the ones who do the
17 testing and set up the data for the election. Diebold does
18 not. They have their on-site advisors to make sure that if
19 we have questions they can answer them. For that, I
20 appreciate them and I ask for certification on this system.

21 Thank you.

22 CHAIRPERSON MCDANNOLD: Thank you.

23 Following Ms. Reson will be Dagmar Zakim.

24 MS. RESON: Hi, I'm Sherry Reson, I'm with the
25 California Election Protection Network.

1 And the National Association of Counties was
2 founding in 1935. It is a national organization of election
3 officials, and representing 80 percent of the voting
4 population. On October 20th of this year, they wrote to
5 Congress, "Before you conclude the first session of the
6 109th Congress, county officials across the nation urge you
7 to attend to a critical piece of unfinished business that
8 will protect and preserve the integrity of our voting
9 process. Fix the implementation timeline for the Help
10 America Vote Act."

11 Many counties across the nation will be unable to
12 comply with provisions of that law that are scheduled to
13 take effect on January 1, 2006, because the federal
14 government failed to meet its own statutory deadlines for
15 issuing standards for voting equipment, standards that have
16 not been finished and to which no equipment has yet been
17 tested or certified.

18 In the absence of this certification, county
19 officials can only gaze into a crystal ball and make
20 predictions about which equipment will eventually meet the
21 federal standards in the face of spiraling costs and
22 threatened lawsuits in federal court.

23 The Elections Assistance Commission has recognized
24 the impossibility of this situation and stated it best in
25 their annual reports for 2003 and 2004. They write, "The

1 implications of these delays are likely to include continued
2 problems of election equipment, other unresolved election
3 administration issues such as a voter verifiable paper
4 audit, and a likely inability of states and local elections
5 jurisdictions to meet HAVA requirements by statutory
6 deadlines."

7 And they write, "Perhaps the most serious
8 implication of the delayed EAC start up is the impact it
9 will have on state procurement of new election equipment and
10 the ability of some states and local election jurisdictions
11 to meet HAVA requirements by statutory deadlines. We urge
12 you to provide a temporary moratorium on federal agency
13 enforcement of the deadlines in the Help America Vote Act.
14 This will also send a message to the federal courts to give
15 the states and counties breathing room to make wise
16 decisions based on guidance from the EAC, as was the intent
17 of HAVA."

18 And I'm happy to make this available to you
19 electronically.

20 CHAIRPERSON MCDANNOLD: Please do. Thank you.

21 (Applause.)

22 CHAIRPERSON MCDANNOLD: Following Ms. Zakim will
23 be Megan Matson.

24 MS. ZAKIM: Hi, my name is Dagmar Zakim. I'm from
25 Marin DFA.

1 Let me first address some unfinished business. I
2 understand that Mr. March has directed an e-mail to Mr.
3 Freeman and I just wanted to know if Mr. March could expect
4 an answer to his questions? That might be something that
5 could be addressed at some point.

6 Obviously, the public at large, the perception of
7 the public at large is that they don't trust the voting
8 systems. And it turns out that the Government
9 Accountability Office report of September 21st also seems to
10 justify that concern. Substantial concerns are detailed in
11 this report and it consisted of electronic voting issues and
12 they have been realized and have caused problems with recent
13 elections resulting in the loss of cast votes.

14 I think that the limit functionality testing
15 performed by the federally contracted independent authority
16 *** sent by Mr. Freeman does not test for known security
17 vulnerabilities on the Diebold system. And I'm going to say
18 that it's not only the Diebold system, it's other systems
19 too, but we're only talking about Diebold today.

20 But the GAO found serious problems and their list
21 is long. And they themselves have said that there's no way
22 to guarantee the vote until 2008 until more work has been
23 done on the security of the systems. And some of the points
24 that they bring out are the electronic voting systems did
25 not encrypt cast ballots through system auto locks, thus

1 making it possible to alter them without detection.
2 Falsifying election results without leaving any evidence of
3 such action by using altering memory cards.

4 Remember that the GAO is bipartisan, it has three
5 Republicans and three Democrats. And this issue really
6 should be nonpartisan, not corporate, but the way that
7 citizens connect with their government officials and their
8 government, the sole way that they can connect.

9 The locks preventing access to the systems were
10 easily picked and the keys were simple to copy. Supervisory
11 access to the voting network was also compromised by
12 repeated use of the same user IDs, combined with easily
13 guessed passwords. And I could just go on the list, I'm
14 certain that you've read the report, it's 99 pages.

15 The other thing that really concerns me and I
16 brought up in the last VSPP hearing is the cost. And I
17 think the cost of the system is prohibitive, it's
18 prohibitive for the population at large, but also the
19 ongoing costs in the future. The costs of maintenance, the
20 cost of technicians, the cost of --

21 MS. INGRAM-KELLY: Thirty seconds.

22 MS. ZAKIM: So I will end with, the suggestions
23 made by the GAO to ensure security of the machines barely
24 scratched the surface of the problems, what is needed to
25 improve the national voting system standards. They divulge

1 that despite the many official assurances that the problems
2 of the past elections were isolated and few, the election
3 system is indeed riddled with problems and flaws. You can
4 not have riddled problems and flaws in our voting system.

5 MS. INGRAM-KELLY: Time.

6 MS. ZAKIM: Thank you.

7 (Applause.)

8 CHAIRPERSON MCDANNOLD: Following Ms. Matson will
9 be Dan Kysor.

10 MS. MATSON: Hello, my name is Megan Matson, I am
11 here as the mother of three young future voters. I'm here
12 as a taxpayer and I'm here representing my organization
13 Mainstreet Moms. I thank you for listening to us today and
14 I hope that you are really hearing what we're saying.

15 I would ask that the Secretary of State not only
16 not certify Diebold but join the National Association of
17 County Officials in asking that the absurd HAVA deadline be
18 extended. I think that is forcing a terrible decision and
19 they haven't met their own federal timeline, they've
20 admitted as much, and they are now facing a GAO report which
21 I hope every one of you has read, as we have, that
22 resoundingly condemns in particular the DREs. The Carter-
23 Baker Commission also condemns the DREs.

24 And I just feel that my vote is precious to me.
25 I've taught my children to hold it as precious, and I can't

1 trust that the transition to this technology that we're
2 making can at all ensure our democracy.

3 I think that you guys are at a really particular
4 juncture in time. There has always been election fraud,
5 there has always been ballot stuffing, but right now we're
6 facing a decision where the scale on which that can happen
7 is unprecedented. Eighty percent of our votes were counted
8 by two private companies in our last election. That's an
9 outrageous centralization of power. It's too great a
10 temptation to fraud when the stakes are so high.

11 I don't want California to be Maryland where two
12 state commissioned independent tests gave resounding F's
13 once again to a technology. Maryland had spent \$54 million.
14 That's the money that's coming from HAVA to the state is not
15 worth compromising our elections. I don't want California
16 to be North Carolina where they had to revote their vote
17 because it was in such shambles and they couldn't track the
18 results. I feel that we are a giant beta test of these
19 persistently inferior vendors every time we go to vote. I
20 don't want to tell my kids that they will catch and crack
21 it, they will catch and crack it. It's not enough. We need
22 to go and we need precinct-level counting.

23 MS. INGRAM-KELLY: Thirty seconds.

24 MS. MATSON: Thank you.

25 And I think that the DRES in particular are just a

1 complete sham from every expert we've heard today.

2 So please, I ask you again, do not certify Diebold
3 and join our movement to extend that deadline.

4 Thank you very much.

5 (Applause.)

6 CHAIRPERSON MCDANNOLD: Following Mr. Kysor will
7 be Forrest Hill.

8 MR. KYSOR: Good afternoon, it's been an
9 interesting morning. My name is Dan Kysor, I'm Governmental
10 Affairs Director for the California Counsel of the Blind,
11 CCB. We are the largest consumer organization of blind and
12 visually impaired consumers in the state of California. We
13 have 40 to 50 affiliates and chapters scattered throughout
14 California from Eureka to San Diego.

15 I'm here to support the dream of electronic
16 voting. I don't think there's many in here that actually
17 probably do. But we do because of the dream that blind and
18 visually impaired individuals can use our civil right of
19 voting which we've never been able to do. I heard a lot of
20 people talking about going to paper ballots and going back
21 to the old way of having people help disabled people vote.
22 Excuse me but that is not independent verifiable ballot,
23 it's not the way that everybody votes. You have that right,
24 I should have that right.

25 Now, what really has been the nightmare of this

1 whole situation and we opposed the verifiable paper audit
2 trail because of exactly why we're standing here today. And
3 many of the people in this room I think are damn
4 disingenuous because they want it to fail but we want it to
5 succeed. All disabled people want this to succeed. So we
6 hope that you do not approve the Diebold system. Diebold is
7 making a sham of voting in California.

8 Now, what I would like to, and please don't
9 applaud to me, thanks. What I would like to see is that we
10 work on some research, some really serious research about
11 direct access to the text to speech module in the VVPAT
12 machine. Therein lies the problem.

13 And I was dismayed to hear about the Sequoia
14 system because we were not a part of that, we didn't know it
15 was happening, nobody told us that, and that's not
16 compliance. You can't give disabled people partial access
17 and call it accessibility.

18 So we did like everything that the Diebold machine
19 as far as the access, it was pretty good, except for the
20 VVPAT. Once you got to the VVPAT, plus once you got to the
21 magnification, which wasn't there.

22 MS. INGRAM-KELLY: Thirty seconds.

23 MR. KYSOR: Thank you very much and we urge you to
24 not support the Diebold system.

25 Thank you.

1 (Applause.)

2 CHAIRPERSON MCDANNOLD: Forrest Hill. Tomas
3 Nakada. Daniel Ashby.

4 MR. NAKADA: Hi, my name is Tomas Nakada. I came
5 up here from San Francisco today to tell you that this
6 Diebold should not be --

7 CHAIRPERSON MCDANNOLD: Use the microphone.

8 MR. NAKADA: I'm a concerned citizen and I want to
9 know that this bill has been defeated. We're buttering our
10 elections officials bread. I just hope that you guys do not
11 verify Diebold.

12 Thank you.

13 CHAIRPERSON MCDANNOLD: Thank you.

14 (Applause.)

15 CHAIRPERSON MCDANNOLD: Daniel Ashby. Mr. Ashby
16 will be followed by the other Michael Smith.

17 MR. ASHBY: Hi, my name is Dan Ashby and I'm with
18 the California Election Protection Network and the Voters'
19 Rights Task Force in Alameda County.

20 And I've been to one of these hearings earlier and
21 I'm observing some of the same patterns of failure to
22 provide adequate public notice, particularly the failure to
23 provide the copies of the reports we're supposedly here to
24 discuss and critique, if I'm not mistaken only seven days
25 before this hearing when I believe the legal requirement is

1 30 days. That makes it very difficult for the volunteer
2 activist community to adequately respond to these complex
3 matters. Although actually a lot of them have been
4 responded to time and time again by persons far more
5 qualified than we such as Compuware, the Robb Reports in
6 Maryland and the work by Blackbox Voting, which I do not
7 find any adequate response to in any of the papers or
8 statements we have received from the Secretary of State's
9 office.

10 We have demonstrated and seen actual proof of the
11 concept as it's called in the trade of entering the GEMS
12 editable system, altering the vote, and exiting without a
13 trace. And that's totally unacceptable for any voting
14 system and the fact that the Diebold Company seems to win
15 contract after contract, here just recently winning 41
16 counties of the 88 in Ohio implementing the TSX machine
17 there and then receive the kind of results we saw in the
18 Ohio election reform propositions that are reverse by 20 to
19 30 polling points in the course of two weeks. That's just
20 unbelievable voting.

21 But we're in the realm of not conspiracy but
22 perhaps theory. Is it just a coincidence that these kinds
23 of election results follow where Diebold and other DRE
24 systems are installed. We're dealing with uncertified
25 software and I notice that even in the official reports by

1 your own advisors they are warning you about, it says, "it's
2 possible for these failures," referring to the volume test,
3 "were assigned to a large number of other latent software
4 defects." This issue warrants further investigation before
5 any modified versions of the TSX are certified.

6 The fundamental barrier to analysis of these
7 software errors is lack of access to source code and this
8 ultimately is the fundamental objection to Diebold and all
9 other privatized voting systems. You have no business
10 carrying public votes on privatized corporate software.

11 MS. INGRAM-KELLY: Thirty seconds.

12 MR. ASHBY: I will put this to you. 19205
13 requires that the voting systems be free of fraud and
14 manipulation. That's a duty of the Secretary of State's
15 office and if you do not enforce the law, the citizens will
16 have to take recourse ourselves, we will challenge you in
17 court. And I ask you this, after what you've heard today,
18 do you think you would prevail before a jury of your peers?
19 I don't think so.

20 (Applause.)

21 CHAIRPERSON MCDANNOLD: Following Mr. Smith will
22 be Mary Beth Branigan.

23 MR. SMITH: Yes, my name is Michael Smith from
24 Santa Cruz County.

25 And to begin with, I would like to acknowledge a

1 particular appreciation to a woman who could not be here
2 today who is ill, and that's my wife because as of May of
3 next year, we will have come to three years of these
4 meetings. And we were the only two three years ago before a
5 board much like you who would not entertain questions and so
6 forth and when she asked if they were concerned about the
7 history of these companies, she was called out of order and
8 suggested that she write the Secretary of State.

9 Diebold activists have -- and she got a hold of
10 many, many people who are in this room today. And because
11 of that activism, and I think you're getting a true sense of
12 the public opinion of the public disconfidence in the
13 Diebold system. We have sat through this entire process,
14 seen when Diebold lied to the Secretary of State and the
15 Secretary of State's panel's reaction to that which was
16 vehemence against being lied to. You are going through a
17 growing pain as a new group, I appreciate that.

18 Two of the main concerns that I want to voice
19 today, I cannot believe the system is adequate for the
20 testing of these systems. And particularly, we are talking
21 about Cyber and Wylie Labs. In the analysis of voting
22 testing of the AccuVote-TSX AccuView Report, of which was
23 alluded to in testimony today, David Jefferson as well as
24 others indicated that under their impartial interpretation
25 of the standards, the failure rate observed during these

1 tests was more than ten times higher than permitted by
2 federal standards. How can they get by labs with a ten
3 times failure rate of what is acceptable?

4 So I think the Secretary of State has to be
5 extremely concerned about the testing procedures.

6 MS. INGRAM-KELLY: Thirty seconds.

7 MR. SMITH: It was also alluded to in the North
8 Carolina case. I would like to read just a brief conclusion
9 here. In it's complaint, Diebold made the following
10 remarkable statement. "In light of the broad requirements
11 mandated by the North Carolina legislature and the criminal
12 and civil penalties associated with noncompliance, plaintiff
13 DESI cannot submit a proposal --

14 MS. INGRAM-KELLY: Time.

15 MR. SMITH: -- in response to it's voting machine
16 RFP without necessarily --

17 CHAIRPERSON MCDANNOLD: Thank you, Mr. Smith.

18 MR. SMITH: -- a violation of state law." I think
19 that says it all.

20 Thank you.

21 (Applause.)

22 CHAIRPERSON MCDANNOLD: Following Ms. Branigan
23 will be Dale Axelrod.

24 MS. BRANIGAN: Good afternoon. I'm Mary Beth
25 Branigan from Marin County. And my partner and I have been

1 following the whole issue of electoral fraud in our
2 electoral system for the last years now and have produced
3 documentary teaching tools on it.

4 And I want say that I'm speaking also as a mother
5 and a grandmother, and I was struck by the earlier speakers
6 chiding the audience to set a proper model of respect for
7 the children present. But I really think we must inspire
8 our children to question authority and to stand up for our
9 rights against power holders. And some children here
10 already have learned that lesson and were out in front
11 chanting with their signs will our votes ever be counted.

12 And I am sure that you're going to appreciate the
13 irony of that since you are sitting here in a very crucial
14 position to make sure that that happens.

15 And I think that the whole question of certifying
16 the Diebold machines is absurd on its face with their track
17 record. So I am reminded in this situation of noted author
18 Chamerce Johnson's comment that one of the prime reasons for
19 the fall of the Soviet Union was unreformable corruption.
20 And I'm sorry, but this is what it appears to a majority of
21 the people who have any information about this issue.

22 So many of us across the nation and particularly
23 here in California realize that California is next in line
24 to be Ohioized, and we're not going to stand for it. First,
25 our Democratic governor was replaced by a Republican in an

1 election dominated by in 17 counties voting on illegally
2 functioning Diebold machines.

3 Next our Secretary of State was abruptly replaced
4 by a Republican and then despite Diebold's blatant criminal
5 record and procedures you are in a process obviously
6 determined to help them get California's extremely lucrative
7 contract. I'm sorry, this is not acceptable.

8 Without a functioning electoral system, an
9 uncorrupted electoral system, I'm sure you will understand
10 what we would have is a fascist dictatorship.

11 Yes, I'm sure you would like my time to be over.

12 So I ask you to urge Secretary of State McPherson
13 to support a temporary moratorium on --

14 MS. INGRAM-KELLY: Thirty seconds.

15 MS. BRANIGAN: -- federal agency enforcement of
16 HAVA to allow states and counties to make wise decisions.

17 Thank you.

18 (Applause.)

19 CHAIRPERSON MCDANNOLD: Dale Axelrod. Randy
20 Hicks. Paula Lee.

21 MS. LEE: Good afternoon. Thank you for having
22 the hearing. I'm Paula Lee, I'm with the League of Woman
23 Voters of El Dorado County.

24 My county is purchasing this equipment. We are
25 one of the counties that is working under this HAVA deadline

1 and so the funding requires that we make this decision by
2 January 1st. And so I do believe that probably this
3 deadline is forcing this certification perhaps without the
4 accessible and other security concerns being addressed, but
5 I want to talk about some other standards.

6 Our local League of Women Voters is seeking
7 compatibility of this equipment, this Diebold equipment, to
8 provide for ranked ballot voting, just like Alameda County.
9 They have three cities that as you know whose voters have
10 already adopted instant runoff voting that requires ranked
11 ballots.

12 So this is the third time that I have been here
13 with this request and I was told that the VSPP panel, the
14 tech group of that panel, would be formulating standards for
15 the vendors so that they could make the equipment compatible
16 with ranked ballots.

17 And now today I hear that the VSPP panel has been
18 disbanded and, frankly, without these standards, the vendors
19 are not motivated in any way to provide for this
20 compatibility. So my question is, I heard you weren't
21 taking questions, but I hope maybe you can answer this
22 simple one, are you still planning to provide these
23 standards for ranked ballot compatibility and when will they
24 be ready? We've been waiting a long time.

25 Are you able to answer that?

1 Did you hear my question, I could repeat it.

2 CHAIRPERSON MCDANNOLD: No, none of us are aware
3 of any efforts underway in that direction to create
4 standards.

5 MS. LEE: This was something that the Secretary of
6 State directed the panel to do. So has the Secretary of
7 State changed his mind? Do you know?

8 PANEL MEMBER KANOTZ: This is really not the forum
9 to discuss something like that. You could comment on the
10 Diebold system or anything that you like.

11 MS. LEE: Well, I am commenting on that because it
12 is one of the systems. But you don't know the answer I
13 guess, so all right.

14 CHAIRPERSON MCDANNOLD: Okay, thank you.

15 (Applause.)

16 CHAIRPERSON MCDANNOLD: Robert Weber. Andrew
17 Dra'l. Craig Thomas Yates. Claire Toomay. Carol Bailey.
18 Jerry Bailey or Forrest Hill. Bin Ries-Knight. Ruth Hoke.
19 Valerie Hastings. Mariellen Layne. Or Dave Joki.

20 Okay. We have no other further --

21 MR. SOPER: I filled out a card.

22 CHAIRPERSON MCDANNOLD: You spoke earlier. We
23 allowed you to speak at the beginning of the meeting for an
24 extending period of time, Mr. Soper.

25 So with no other further comments, I would like to

1 conclude this hearing.

2 As we mentioned earlier, if there is anybody who
3 wishes to submit additional public comment at length through
4 writing, that may be done by mailing it to the Secretary of
5 State's office, to my attention or by submitting it via e-
6 mail to VotingSystemComment@SS.CA.GOV. If you go to our
7 website and download the agenda for today's meeting, that
8 address is on the agenda.

9 VotingSystemComment@SS.CA.GOV.

10 Again, on behalf of the Secretary of State, I
11 would like to thank you all for being here today.

12 AUDIENCE MEMBER: Is there a deadline for these
13 comments?

14 CHAIRPERSON MCDANNOLD: The close of business next
15 Monday.

16 AUDIENCE MEMBER: Okay. One last question. When
17 will the next hearing be?

18 CHAIRPERSON MCDANNOLD: The next hearing will be
19 held when we have a system to certify.

20 AUDIENCE MEMBER: How will we be notified?

21 CHAIRPERSON MCDANNOLD: As I said earlier today,
22 we post it. For this one we posted the notice for the
23 hearing on the website at least 30 days in advance. It was
24 posted on the 20th of October. For those that want a direct
25 notice, as I mentioned earlier today, that you can go to our

1 website and sign on and we've created a web link so that we
2 can send the notices directly to you.

3 AUDIENCE MEMBER: And the next meeting will again
4 be when?

5 CHAIRPERSON MCDANNOLD: When we have a system to
6 consider for certification.

7 I'm sorry, the meeting is adjourned, if you have
8 specific questions, you're welcome to come up and address
9 them.

10 (Thereupon the Secretary of State meeting was
11 concluded at 3:10 p.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER

2 I, MICHAEL J. MAC IVER, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein; that
4 I reported the foregoing Secretary of State proceedings in
5 shorthand writing; that I thereafter caused my shorthand
6 writing to be transcribed into typewriting.

7 I further certify that I am not of counsel or
8 attorney for any of the parties to said Secretary of State
9 proceedings, or in any way interested in the outcome of said
10 Secretary of State proceedings.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 9th day of December 2005.

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18 Michael J. Mac Iver
19 Shorthand Reporter
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