

The State of Texas



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Roger Williams
Secretary of State

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**Public Hearing on the Voluntary Voting System Guidelines
California Institute of Technology, Baxter Humanities Building
Pasadena, California**

Statement from Ann McGeehan, Director of Elections for the Texas Secretary of State

Good afternoon, Commissioners, and thank you for inviting me to participate in this public hearing. Texas is one of the roughly 40 states that have adopted the federal voluntary voting system standards. Before a voting system may be certified for use in an election in Texas, the voting system must meet the voluntary federal standards as determined by an approved Independent Testing Authority (ITA). Once a system meets the federal standards, the State examines the system to determine compliance with Texas law. These standards are critical to our state process, and we want to thank you for your efforts to update the standards. Comprehensive, fair standards and a thorough testing process at the federal level are essential to ensure smooth running elections and to ensure that all voters have confidence that their ballot is counted accurately.

I am not a computer engineer or electronic information expert. As a state election director, my experience lies more with the process and not the technical standards themselves. My comments today will center on three main processes:

1. The certification process and how the process can be as transparent and open to the public as possible. I will share a recent legal challenge regarding the openness of the Texas voting system certification process and the legislative compromise, which has now mooted the lawsuit.
2. The need for new procedures for direct record electronic voting system standards. As all states incorporate accessible voting system technology, there is a tremendous need for the promulgation of uniform standards for their use.
3. Guidance on voter education programs. The Help America Vote Act requires that a jurisdiction which chooses to retain its paper ballot or centrally counted optical scan voting system must implement a voter education program that educates voters on how not to over vote and how to correct an error on their ballot.

Openness of the Certification Process

About one year ago, my office was sued by the American Civil Liberties Union regarding the Texas certification process. *ACLU of Texas, et al v. Geoffrey Connor, Secretary of State*, Cause Number N402562. The suit alleged that our process violated the Texas open meetings act, and sought that our entire certification process be performed in a public meeting. Our state certification process consists of the following:

1. Vendor obtains qualification under the voluntary federal voting system standards.
2. Six examiners (four appointed by the Secretary of State and two by the Attorney General) who review the system—ask vendor questions, vote ballots and file a written report recommending certification or no certification.
3. The Elections Division reviews the written reports and makes a recommendation to the Secretary of State.
4. The Secretary of State makes the final determination to certify.
5. The county commissioner court then may acquire, through purchase or lease, the certified voting system.

The plaintiffs alleged that the six examiners were a governing body and so their meetings should be open to the public. The state disagreed with that argument because the examiners' recommendations are not final; the Secretary of State is under no obligation to follow their recommendations. However, the lawsuit did highlight the fact that the people of Texas desired a window into the certification process. In response to the lawsuit, the legislature passed a new law which provides that after the examiners have reviewed the system and filed their written reports, the Secretary of State must conduct a public hearing. (House Bill 2465, 79th Regular Session 2005). The examiners' reports are considered public information and we post them on the SOS webpage. The public hearing would be conducted after the reports are filed so that members of the public could comment on the reports, ask questions, and make their own recommendations to the SOS regarding certification.

How does this Texas experience impact the federal certification process? One must continuously balance between the daily grind of an election official's work process and the public's right to know how its government works. I mention the Texas experience to emphasize what you already know: in order for the public to have confidence that a voting system is counting ballots correctly, they must have confidence in the certification process which allows the voting system to be used. Volume Two of the Voluntary Voting System Guidelines addresses the federal certification process, but does not specifically address whether the ITA reports are considered public information. I would encourage you to make those reports open to the public and post them on the EAC website. In section 1.8.3, the proposed Standards encourage the states and local jurisdictions to obtain copies of the reports.

If the ITA report was posted on your website, then all state and local jurisdictions would have easy access to them, and interested members of the public would as well. If a specific portion of the report contained confidential or proprietary information, then that information could be redacted. Currently, the ITA reports are labeled as confidential, at least some ITA labs have marked them that way. If you put the vendors and the ITA labs on notice that the reports are public information, then it is up to the vendor to assert any privilege which limits access to the information.

New Procedures for DREs

The foundation of Texas election law, and probably state law in many states, remains the paper ballot. All state election law procedures center on some kind of paper ballot, whether it be a punch card, optical scan or traditional paper ballot that is hand counted. Texas law has strong, well defined procedures that require logic and accuracy testing for electronic counting of paper ballots. These electronic systems must be tested 48 hours before use in an election, immediately before the polls open on election day, and one final test after all ballots have been counted to ensure that the ballots were counted properly.

This kind of testing process does not easily apply itself to DREs. Is it necessary to test each and every DRE unit—possibly thousands of units—or is it adequate to test the equipment that programmed the ballot to ensure that all ballot styles have been programmed in correctly? Is it effective testing for people to cast ballots on a DRE according to scripted ballots or is an electronic heavy volume performance test more appropriate? Or should it be a combination of the two? Each state or jurisdiction is now left to prescribing these standards in a vacuum. If the EAC and NIST could lend their expertise to this process, it would ease the transition to DRE voting across the nation.

Another process which may need additional definition in the electronic age is records retention. Everyone understands that the physical paper ballot must be retained for twenty-two months. How does an electronic ballot have to be retained? The proposed standards require that a ballot be stored electronically in redundant locations. Must each redundant ballot be retained for the preservation period? For some DRE systems, this can mean that the DRE unit itself could not be used for twenty-two months. Each DRE costs between \$2,500 and \$3,500 and represents a major economic investment. In 2006, the average Texas county will conduct a minimum of four elections. To tie up a DRE unit for twenty-two months is a potential economic hardship that most local jurisdictions cannot sustain. This may be addressed somewhat in the proposed standards, but the states could use very clear guidelines here. For example, in Texas, the early voting period begins 17 days before an election and ends 4 days before the election. Our local counties need to know what information needs to be saved off of the DRE unit before it can then be deployed for use on election day.

Voter Education Program for Use in Conjunction with Hand Counted Paper Ballot and Centrally Counted Optical Scan Voting Systems

Consistent with HAVA, some Texas counties have chosen to retain their hand counted paper ballot systems or centrally counted optical scan systems in conjunction with one accessible voting system unit. Section 301 of HAVA requires that if a jurisdiction maintains one of these systems, then the jurisdiction must implement a voter education program to educate voters on how not to over vote and how to correct a ballot. The states could use guidance from the EAC on what this voter education program should and should not look like. Is it enough to provide instructional materials at the polling place? Should the instructional materials include graphics? What are some activities that states should stay away from, e.g., when does voter education cross the line into a get-out-the-vote campaign? Or, can a get-out-the-vote campaign also accomplish the mission of voter education?

None of these questions are meant as criticism of the proposed standards. Instead, these questions emphasize the practical side of establishing new standards and how the new standards and technology will blend with the existing election process.

Again, thank you very much for inviting me to be here today. HAVA has presented its challenges, but overall it represents an improvement to the voting process. The State of Texas thanks you for your hard work in making HAVA a success and please call upon us in the future.