

Affidavit of Dr. Douglas W. Jones
Regarding the Revised Draft Voting Systems Standards Proposed
by the New York State Board of Elections in February 2006

I, Douglas W. Jones, make this affidavit under penalty of perjury and state as follows:

1. I am an Associate Professor at the University of Iowa in the Department of Computer Science, where I have taught since 1980. My areas of specialization include voting technology. This affidavit is based upon my personal knowledge and professional opinion.
2. My expertise regarding voting technology is outlined in my affidavit of January 23, which I incorporate by reference as if fully set forth herein.
3. I have examined a document named "boeregscompare021006.doc" showing proposed changes to Subtitle V, Part 6209 dealing with Voting System Standards. This reflects significant changes from the regulations proposed in December 2005, which I commented on in my affidavit of January 23, 2006, but the regulations as revised suffer from big holes in security. The revised regulations should not be promulgated by the Board.
4. On February 12, 2006, I sent via E-mail to the Board and its staff a color-coded mark-up of a draft version of the revised regulations as proposed on February 14, 2006. A copy of this color-coded mark-up, which was not exhaustive, is attached at Tab A. The mark-up must be seen in color to be useful. The revised regulations do not adopt the changes that I proposed in my color-coded mark-up.
5. Nor do the revised regulations reflect all of the the changes warranted by the concerns expressed in my affidavit of January 23, 2006, which I reaffirm here as applicable to the revised regulations.

6. The focus of this affidavit is on the failure by the Board to propose performance standard regulations for voting systems certification. As explained below, I recommend that the Board only certify voting systems of companies that it has determined have integrity and otherwise are responsible contractors and only if the Board determines for itself, subject to rigorous criteria, that the voting system accurately, reliably and securely receives and records votes in accordance with the voter's intent.
7. Section 6209.6 purports to state examination criteria. There are many requirements here that the vendor provide information and that the state board should consider, but I see no performance requirement. The absence of performance requirements is a serious flaw in the revised regulations.
8. The definitions section does not define a certified voting system.
9. One could imagine, in the worst case, a vendor providing all of the required materials, with test results that are generally bad and technical materials that indicate considerable risk, after which the state board considers all of this and certifies the system anyway because there was no explicit violation of any explicit requirement in the standards.
10. Even simple definitions of certification can provide the board with significant leverage. For example, in Iowa, the Board of Examiners for Voting Machines and Electronic Voting Systems was required to certify that "the machine or system is suitable for use within the state and [meets] performance standards for voting equipment in use within the state... the performance and test standards, as adopted by the Federal Election Commission on April 30, 2002 ... [and that the machine] can be safely used by voters at elections. " (Iowa Code of 2003, 52.5). The text states, with

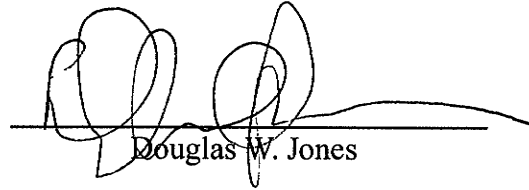
less than perfect wording, an important additional criterion, “the capacity of the machine to register the will of the voters.”

11. Where the state and federal standards have failed to anticipate a significant failing in a voting system that came before the Iowa Board of Examiners, we have on several occasions used the broad requirement that the machine have “the capacity ... to register the will of the voters” as grounds to refuse certification.
12. I strongly urge that the New York rules include a definition of the term certified system, and that the rules include a brief concise standard of what a certified system must achieve. Otherwise, these regulations are empty because they permit voting systems that simply may not be doing their job.
13. In addition, the certification criteria do not include an inquiry into the vendor's track record.
14. I recommend that the vendor be required to submit a list of all states or jurisdictions in which the system under consideration has previously been considered for certification or certified for use, including any suspension, de-certification or the like, along with supporting documentation; in addition, I recommend that the vendor be required to provide a list of all jurisdictions where the system has been used and of all complaints about it or its products or services of which it is aware.
15. Where the exact system in question has not been certified or used elsewhere, I recommend that the vendor be required to provide information for comparable systems or systems incorporating major components of the system in question.
16. It may also be appropriate to require vendor disclosure of any past or pending court cases involving the voting system in question or any of its major components, and the disposition of those cases that have been resolved.

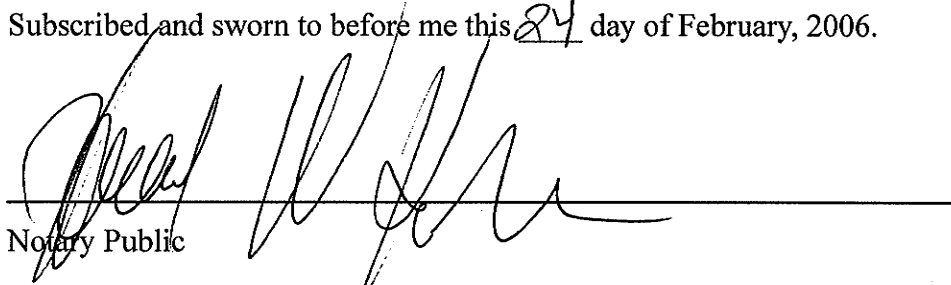
17. Evidence of fraud, faulty systems or failure to correct known problems are among factors that weigh strongly against certification of a company or its voting systems.
18. Any company providing or seeking to provide a voting system in New York State should disclose those who hold a significant controlling interest in the company, especially if that information is not otherwise publicly available. Voting system companies should be above reproach, free of partisan or foreign influence or control, and if this disclosure can reveal conflicts of interest that might otherwise be obscure. The definition of a significant controlling interest used in SEC filings is reasonable, but this information is only available for publically held companies.
19. I further observe that the revised regulations are dangerously silent with respect to the presence of code residing on removable media such as memory cartridges. Current production voting equipment from several vendors has passed through ITA certification with executable code stored PCMCIA cards. The regulations should explicitly prohibit the storage of code on removable media, because this makes it far too easy to change the voting system software or firmware.
20. These are some additional serious problems and concerns that I have with the revised regulations prepared by the New York Board of Elections. Among other shortcomings, they do not adequately address shortcomings in the FEC/EAC voting system standards in the area of mark-sense ballot tabulation, they do not adequately protect the right of the public to full and timely disclosure of information about the voting system acquisition process, and they do not properly distinguish between the regulation of voting system purchase and the regulation of voting system administration and use.

21. Like those originally proposed in December 2005, the revised regulations should be withdrawn and reconsidered in light of my comments.

FURTHER, AFFIANT SAYETH NOT.


Douglas W. Jones

Subscribed and sworn to before me this 24 day of February, 2006.


Notary Public

