



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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August 20, 2007

TO: All County Clerks/Registrars of Voters (07117)

FROM:

A handwritten signature in cursive script, appearing to read "Chris Reynolds", written over a horizontal line.

Chris Reynolds
Deputy Secretary of State, HAVA Activities

SUBJECT: **ES&S Public Hearing Notice**

Attached please find a copy of a notice being published today for a September 20, 2007, public hearing to accept public comment on the Secretary of State's intention to seek administrative relief against Election Systems & Software, Inc. (ES&S) for deploying uncertified AutoMARK ballot marking devices.

The public notice makes note of the five forms of relief available under Elections Code Section 19214.5. However, the Secretary of State has not decided whether to pursue remedies beyond (a)(1) and (a)(4).



PUBLIC HEARING

LOCATION

Office of the Secretary of State
1500 11th Street
First Floor – Auditorium
Sacramento, California 95814

HEARING DATE AND TIME

September 20, 2007, 10:00 a.m.

NOTICE

Elections Code section 19213 provides that a voting system or part of a voting system which has been approved by the Secretary of State shall not be changed or modified until the Secretary of State has been notified of the change in writing and has determined that the change or modification does not impair the accuracy and efficiency of the voting system or part of a voting system sufficient to require a reexamination and re-approval of that system or part of a system.

Elections Code section 19214 authorizes the Secretary of State to seek injunctive and administrative relief when a voting system has been compromised by the addition or deletion of hardware, software, or firmware without prior approval. Elections Code section 19214.5 authorizes the Secretary of State to seek monetary damages and other relief for an unauthorized change in hardware, software, or firmware to any voting system certified or conditionally certified in California.

Election Systems & Software, Inc. (ES&S) has violated Elections Code section 19213 by deploying for use in polling places in several California counties hundreds of units of a version of the AutoMARK ballot marking device that was changed and modified from the version approved by the Secretary of State, without notifying the Secretary of State and without a determination having been made by the Secretary of State that the change or modification does not impair the accuracy and efficiency of the AutoMARK sufficient to require a reexamination and re-approval of the AutoMARK or the voting system of which it is a part.

Accordingly, pursuant to Elections Code section 19214.5(b) and Government Code section 6064, notice is hereby given that a public hearing will be held to give interested persons an opportunity to express their views regarding the intention of the California Secretary of State to seek administrative relief against Election Systems & Software, Inc.,

pursuant to Elections Code sections 19214 and 19214.5(a), seeking any or all of the relief specified in section 19214.5(a), including the following:

- (1) Monetary damages from the offending party or parties, not to exceed ten thousand dollars (\$10,000) per violation. For purposes of this subdivision, each voting machine found to contain the unauthorized hardware, software, or firmware shall be considered a separate violation. Damages imposed pursuant to this subdivision shall be apportioned 50 percent to the county in which the violation occurred, if applicable, and 50 percent to the Office of the Secretary of State for purposes of bolstering voting systems security efforts.
- (2) Immediate commencement of decertification proceedings for the voting system in question.
- (3) Prohibiting the manufacturer or vendor of a voting system from doing any elections-related business in the state for one, two, or three years.
- (4) Refund of all moneys paid by a locality for a compromised voting system, whether or not the voting system has been used in an election.
- (5) Any other remedial actions authorized by law to prevent unjust enrichment of the offending party.

ALL ITEMS MAY BE RE-ORDERED TO BE HEARD ON ANY DAY OF THE NOTICED MEETINGS.
THE ORDER OF BUSINESS MAY BE CHANGED WITHOUT NOTICE.

Members of the public are encouraged to submit written comments on agenda items. Written comment should be sent by US mail to the address above or by email to votingsystems@sos.ca.gov. Those wishing to provide oral comment at a meeting should complete a speaker's card upon arrival. In all cases, the presiding officer reserves the right to impose time limits on presentations as may be necessary to ensure that the agenda is completed.

In accordance with Title II of the Americans with Disabilities Act of 1990, reasonable accommodations are available. Requests for reasonable accommodations should be made at least 5 working days in advance of the hearing date. To request reasonable accommodations, please call (916) 651-9163.