

Secretary of State Equipment Certification Advisory Committee

(A.R.S. § 16-442)

1700 West Washington Street, 2nd Floor
Phoenix, Arizona 85007 & Virtually via Zoom
(602) 542-8683 fax (602) 542-6172

FINAL UNAPPROVED COPY
Meeting Minutes of May 2, 2023

II. Call to Order

Tonia Tunnell, Director of Special Projects & Innovation, Secretary of State's Office, called the meeting to order at 9:17 a.m.

III. Welcome & Roll Call

Committee Members Present:

Tonia Tunnell
Peter Silverman, ESQ.
Dr. Michael Marcellin

SOS Staff Present:

Amy Chan – General Counsel
Colleen Conner – State Elections Director
Lisa Marra – Deputy State Elections Director
Paul Smith-Leonard – Communications Director
Alex Wilkinson, SOS Administrative Assistant;
Christina Colvin – Legislative Intern,
Annette Sexton-Ruiz – Election Support Specialist
Raven Padilla – Elections Analyst – Candidate Desk
Derek Williams – Election Support Specialist
Tanner Robinson – Elections Constituent Services Manager

Others Present:

Ryan Macias – Consultant for the Committee and Founder of RSM Election Solutions LLC

Political Party Observers Present:

Jill Norgaard, Republican Party
Mariah Gould, Democratic Party

Zoom Viewership: Approximately 20

Ms. Tunnell began by introducing committee members, representatives from Election Systems & Software, LLC. (ES&S), Secretary of State's Office staff, political party observers, and the consultant for the committee.

Ms. Tunnell commented that she would be serving as Acting Committee Chair, if the committee was comfortable with this. The committee agreed to this, and Ms. Tunnell began serving as Acting Chair moving forward.

IV. Approval of Minutes from the September 19, 2022 Meeting.

The Acting Chair asked for a motion to approve the previous meeting minutes.

Mr. Peter Silverman, Senior Counsel, Zwilling Wulkan, PLC., motioned that the previous meeting minutes dated September 19, 2022 be approved. Dr. Michael Marcellin, Regents Professor, University of Arizona, seconded the motion, and the motion was carried unanimously.

The previous meeting minutes were approved.

V. Review, discussion, and possible vote on recommendation of Voting Equipment Application for Certification of the May 1, 2023 application for state certification of the Election Systems & Software (ES&S) EVS 6.3.0.0 Voting System.

Ms. Sarah Herman, State Certification Manager, ES&S, introduced the application and entire suite of voting equipment from ES&S. She went over the current suite of equipment for consideration in this application as well. The DS200, new DS300, ExpressVote, DS450, DS850, and DS950 were explained briefly. She described the DS200, their polling place tabulator, in further detail, and their DS300, to be reviewed during the meeting. She referred to a Linux upgrade to the DS200, and went on to describe a multi-language vote summary card on the ExpressVote, as well as a timeout work flow alert Feature. She introduced the DS300 further, containing all new internal components, noting the same firmware as the DS200. She referred to its speed improvements, and new developments in preparation for meeting new Voluntary Voting System Guidelines (VVSG) parameters from the U.S. Election Assistance Commission (EAC). Acting Chair Tunnell noted that this equipment was certified by the EAC prior to arriving in Arizona. She noted the VVSG 1.0 is currently being used until new standards by the EAC are finalized.

Mr. Silverman clarified that older equipment would also be up for consideration for certification for the committee. He asked what previous versions were used in which counties. Ms. Susan Paulson-Parmer, Account Manager, ES&S, answered, noting 13 of the 15 counties in the state, except Maricopa and Yavapai Counties. Mr. Silverman sought clarification that the current equipment before the committee has been federally certified by the EAC. The Acting Chair confirmed this.

The meeting then transitioned to the primary election testing of the equipment.

The Acting Chair described the process of how testing of voting equipment works. The vendor was sent definitions for a pretend election. ES&S then programmed the election and sent the SOS blank ballots using the defined precincts, races and candidates. The SOS staff then marked the ballots to have a pre-determined result, not known to ES&S. These are the ballots and a specific script of votes to be made on the accessible equipment will be used by the committee to test whether the tabulated results on the equipment matches the SOS pre-determined outcome. If the results do not match, the committee would go through a precinct by precinct review, she continued. The committee agreed this was acceptable.

Ms. Herman said that EQC programming meant that the equipment can only search for a specific election, addressing Mr. Silverman's concerns regarding needing to enter a specific code for an election to be voted. Ms. Paulson-Parmer asked if federal ballots were separated by precinct. The Acting Chair confirmed this. Ms. Paulson-Parmer added that the ballots to be tested would be noted on each piece of equipment for easier tracking. Mr. Silverman asked if the Acting Chair had test scripts prepared. She confirmed that she did. She went on to mention that Tanner Robinson has offered to test some of the accessible equipment as a blind user. She also said the committee would be testing some of the accessible equipment alongside him as well, addressing Mr. Silverman's concerns.

The primary election portion of the test began at 9:34 a.m.

The Acting Chair requested zero reports. She went on to say that she did request that the EAC confirm the hash code being used prior to this meeting, to confirm that the equipment being tested was actually the same version that was certified by the EAC.

The equipment Mr. Silverman was testing stopped during the test, noting a paper jam. Ms. Herman noted that this was due to the equipment being prepared the previous day before the meeting. Ms. Paulson-Parmer noted that there is a bar that needs to be locked down on the DS200 or the alert would be triggered. She noted that the issue would currently be resolved, and that Mr. Silverman would not see the alert again during his test.

The Acting Chair re-stated current steps in the process for the record, noting that she had miscounted the number of precincts to be tested, and the error was being addressed.

Ms. Paulson-Parmer said that anything could be adjudicated, but that this functionality was not available on the polling place tabulators, addressing Mr. Silverman's concerns.

The issue with the paper jam alert did continue, but the committee was made aware of the issue, and was informed it would not impact the test results. Votes were able to be tabulated.

Mr. Macias noted that overvotes and undervotes would be handled towards the end of the current test. He added that the under and overvotes will need to be handled separately once detected during tabulation. Ms. Herman added that under and overvotes would later then be reviewed during adjudication to determine intent. Mr. Silverman noted that write-in votes would also still need to be done. Mr. Silverman asked to confirm that the under and overvotes were not tabulated during tabulation. Ms. Paulson-Parmer confirmed this.

Mr. Macias noted that due to an overvote issue, the final count would reflect an undervote instead of an overvote, when once specific contest was not included. The committee agreed with this solution. Dr. Marcellin asked for clarification regarding how the overvote issue could be documented on the test script. The Acting Chair noted that it could be noted as an undervote on Dr. Marcellin's test script.

The Acting Chair asked Mr. Adrian Fontes, Secretary of State, Secretary of State's Office, if he wouldn't mind confirming Spanish language noted in the test. The Secretary said he did not want to get involved in the test. Another Spanish language reader was found for assistance.

Mr. Silverman ran through an initial examination of the ballots he and Dr. Marcellin had cast on the accessible equipment with Mr. Macias present. Mr. Silverman then asked the Acting Chair to do an initial review of his accessible votes cast.

Ms. Herman noted that English, Spanish, Hopi, and Navajo were the current languages programmed, noting equipment likely could be programmed up to 27 languages, but that ES&S staff would confirm this, addressing Mr. Macias's concerns.

The Acting Chair described the overvote issue for the political party observers, noting that the equipment was not programmed to detect those, adding that this was her error. She then described the functionality of the accessible equipment. The Acting Chair asked to make sure that spoiled was noted on a ballot not to be used due to the overvote issue.

Mr. Silverman asked when the write-in votes would be counted. Ms. Herman confirmed this is done in the Election Management System (EMS) software once the polls are closed following tabulation of the primary election within the test. Acting Chair Tunnell noted that all polls were now closed, and the results were being cumulated in the EMS. The results would then be compared to the pre-determined results generated by the Secretary of State's Office. Mr. Silverman asked whether this would include write-ins. The Acting Chair thanked Mr. Silverman, noting they would be included. She then suggested that the write-ins could be examined prior to results comparison, and then assigned to the results accordingly. Mr. Macias echoed this suggestion. Ms. Herman asked for clarification as to which write-in votes the committee wanted to be displayed. The Acting Chair noted that there were two official write-ins, which could be viewed on screen and attributed to the results accordingly, as opposed to the other write-in votes, which were not considered official votes because they were not connected to any official write-in candidates. Mr. Macias echoed this, stating that the official write-in candidates would be assigned accordingly during adjudication on screen.

There was some confusion regarding casting a write-in vote for one party candidate which was cast under a different party, who did not run with the party as cast, and it was determined by Acting Chair Tunnell and Ms. Herman that the vote was captured correctly.

Ms. Herman noted that the election official could add a write-in candidate at a later date if needed into the EMS. The Acting Chair noted that this is not specific to Arizona's process.

The Acting Chair went on to describe that Dr. Marcellin was looking at how the write-in process was done. The committee then moved on to the results comparison, which now contained the official write-in votes as cast.

The acting Chair noted there may be an issue with the school districts, noting that her tool separated the contests that were meant to be nonpartisan. This was noted for the committee, that the results would not be impacted, and the results comparison continued. Acting Chair Tunnell went on to say that the Secretary of State's tool had not marked two contests accurately, and they would need to be checked at the precinct level. Republican US Senate and Republican US Representative races would need to be examined again via a precinct report. Dr. Marcellin requested an isolated precinct containing an issue that was split, precinct 9, be examined one contest at a time. It was determined that the machine counted the votes correctly. The committee agreed with this finding.

The Acting Chair restated that a discrepancy was found for US representative and US Senate, noting that when ballots were pulled from a precinct, it was determined that the ballots were voted incorrectly according to the test script, but the machine recorded them correctly. Dr. Marcellin also echoed this.

A second discrepancy was found for State Senate. An overvote was not cast. It was found that there were 0 overvotes on the ballot, and that the machine counted correctly. The committee agreed with this conclusion.

The next discrepancies were concerning school board races. The school board district 1 precinct split was shown to have tabulated correctly. There was simply a human error in the ballot marking. The committee concluded this was correct.

The primary election test was concluded successfully and the results comparisons were found to have matched at 12:33 p.m.

The committee recessed for lunch at 12:33 p.m.; and reconvened at 1:31 p.m.

The general election portion of the test began at 1:33 p.m.

Acting Chair Tunnell requested zero tapes be presented before voting began.

There was a brief issue with Zoom functionality. It was resolved, and the actions taken up to that point regarding generating zero tapes were explained.

Dr. Marcellin began an initial comparison of the contests he voted with the Acting Chair. This was followed by an initial comparison of the ballots tabulated.

The results comparison of the general election test began at 2:19 p.m. and was shown to have concluded successfully at 2:22 p.m.

Mr. Silverman motioned that the committee recommend to the Secretary of State certification of the application.

Mr. Silverman withdrew that motion because it was concluded this application was not dated for the initial date he mentioned in December 2022.

Mr. Silverman moved to recommend to the Secretary of State certification of the May 1, 2023 application for state certification of the Election Systems & Software (ES&S) EVS 6.3.0.0 Voting System. Dr. Marcellin seconded the motion, and the motion was carried unanimously.

VI. Call to the Public – Please note: the committee may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to directing study of the matter or scheduling the matter for further consideration and decision at a later date. Public comments may be sent to elections@azsos.gov, with the subject line: Equipment Certification, and will be read and included in the record. Comments are limited to 5 minutes per member of the public.

Comments from the public are attached to the minutes.

VII. Discussion of upcoming meetings and summary of upcoming events.

Acting Chair Tunnell mentioned the May 19th pending application from Dominion Voting Systems, Inc. She added that she had not yet heard back from Clear Ballot Group, Inc. regarding confirmation of their appearance before the committee, but the meeting was tentatively set for June 5th as of this meeting date.

VIII. Adjournment.

Acting Chair Tunnell motioned that the committee adjourn. Mr. Silverman seconded the motion, and the motion was carried unanimously.

The meeting was adjourned at 2:25 p.m.

PUBLIC COMMENTS: ---Comments from the public are solely opinions of the individual and not endorsed nor fact checked by the Equipment Certification Committee or Secretary of State.

From: Gail Golec

Date: Tue 5/2/2023 10:05 AM

Subject: Chat is disabled on the Election Equipment Certification.

We can not hear or see this presentation. We have very little understanding of the errors that continue to occur here. Please provide the ability to chat.

From: Gabriel Rodriguez, Pinal County IT & Pinal Elections Staff

Date: Tue 5/2/2023 1:33 PM

SOS Staff,

It is very hard to hear the commentary and information being discussed between ES&S staff and SOS staff. We mainly hear muffled voices and mumble voices . We have checked the Zoom settings here, it is not a technical issue on our end. We are also primarily seeing the top of staff heads. It appears the camera needs to be adjusted so that we can view a better angle. It would be great if you can have someone actively maneuvering the camera angle to always have a clear view.

Thank you in advance.

From: Gail Golec

Date: Mon 5/1/2023 4:47 PM

To whom it may concern,

The voting systems in AZ should be returned to Hand Counts and these voting systems should not be certified at all. The reasons for my position to not use the existing equipment to count Our sacred American Vote, include but are not limited to, the following:

All Voting Tabulators are required to record something called a Cast Vote Record. This data is very useful in determining the statistical time patterns of when votes are cast for candidates. Mail-In ballots for Candidates in a fair election should show casting times that are random. If they are not random, then that shows that the votes were manipulated towards a predetermined outcome. This attached Fingerprint of Fraud Report shows unequivocally that the "votes" in 2020 were manipulated across the Nation by a Centralized Algorithm that produced controlled outcomes. Please read Mr. Jeffrey O'Donnell's Executive Summary of the Fingerprints of Fraud Report Volume 1, dated May 1, 2023, into the Official Record.

Our votes are not protected from the PID controlled algorithm's and we scientifically have proven that they exist, with the audit data provided by the individual State and counties.

We do not have Elections in AZ nor in America. We have selections and We have the proof.

If you would be interested in working with myself and a team of knowledgeable individuals, so that we can share the truth with you, I am more than happy to accommodate.

This Equipment Certification that is being provided does not include all the components as mandated by the Help America Vote ACT of 2002.

301 6 (b) VOTING SYSTEM DEFINED.—In this section, the term “voting system” means— (1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used— (A) to define ballots; (B) to cast and count votes; (C) to report or display election results; and (D) to maintain and produce any audit trail information; and (2) the practices and associated documentation used— (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial qualification of the system; and (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

In addition, in January 2017, the Obama Administration gave the Department of Homeland Security (DHS) additional authority to protect federal systems. DHS designated the United States Elections as Critical Infrastructure, (Source:§1016(e) of the USA Patriot Act of 2001 (42 U.S.C. §5195c(e))) thereby requiring The Federal Information Security Modernization Act of 2014 (FISMA 2014) <https://www.cisa.gov/federal-information-security-modernization-act> to update the Federal Government's cybersecurity practices to include FISMA Risk Assessments pursuant to the Help America Vote Act; to include: "(1) [p]eriodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency, which may include using automated tools consistent with standards and guidelines promulgated under section 11331 of title 40;"

These cyber security tests have not been completed as required by Law and are not included in this Equipment Certification. In addition, there are multiple known exploited vulnerabilities affecting Dominion Voting Systems that have been defined by CISA have not been mitigated, nor is there a mitigation available, even if they tried.

How does a lab certify election equipment with known vulnerabilities that has a Terminal Emulator application which could be leveraged by an attacker to gain elevated privileges on a device and/or install malicious code, for instance? (which we know has happened based upon the CVR's) <https://www.cisa.gov/news-events/ics-advisories/icsa-22-154-01>

There has not been an election in recent history used with the existing machines that have complied with this mandated HAVA Error Rate, hence these machines should not be certified for

use at all. The Help America Vote Act of 2002 mandates that the certified system “will yield the most accurate, secure, and expeditious system for voting and tabulating election results” and this will not happen with the current machines in place.”

The Error Rates as mandated by HAVA are: SEC. 301. VOTING SYSTEMS STANDARDS.

(a) REQUIREMENTS.—Each voting system used in an election for Federal office shall meet the following requirements:

(5) ERROR RATES.—The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

3.2.1 Accuracy Requirements

<https://www.fec.gov/resources/updates/agendas/2001/mtgdoc01-62/v1/v1s3.pdf>

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions. In the 2020 audit, we determined that 99.36% of all batches of ballots were adjudicated, disenfranchising voters Rights to correct their ballot before it was counted.

As I indicated, this is only a small portion of the reasons we should NOT accept this certification. Please see attached Administrative HAVA Complaint that the AZ SOS office has illegally ignored, not providing the People a hearing on the Record as required by law. (Please enter this attached Complaint into the Record.)

In addition, there is no process in place that complies with the Help America Vote Act of 2002 as required by ARS 16-442

B. Machines or devices used at any election for federal, state or county offices may only be certified for use in this state and may only be used in this state if they comply with the help America vote act of 2002 and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the help America vote act of 2002.

For instance, the adjudication process is completely illegal.

If the voter selects votes for more than one candidate for a single office- (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

All adjudication functionality, especially, artificial intelligent adjudication, should be disabled and absolutely should not be a part of the any certified voting system.

The Voter who mail in their ballot does not have opportunity to correct the ballot before the ballot is cast and counted, which is required by HAVA, since he ballots are separated from the envelope and then run through the machines at a later date and time.

Also, HAVA requires mail in ballots be accompanied by ID which the State of AZ is not in compliance with.

Section 303: or (ii) in the case of an individual who votes by mail, submits with the ballot- (I) a copy of a current and valid photo identification; or (II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

Unless and until we can put procedures in place that minimally comply with the Help America Vote Act, we must not use the machines to count the votes in AZ as mandated by Law in ARS 16-442B.

I respectfully request that the EAC and the Secretary of State go back to the table and work together to implementing Hand Counts across this state and this Country so that the People will be more assured that their ballot was count as cast and we comply with the Help America Vote Act along the way.

I will also work with you to help ensure that we are in compliance with HAVA, as well.

There is not one technological election system that exists that can not be hacked into, let alone these ancient systems we are using in AZ and we have scientifically proven it.

Again, the Help America Vote Act of 2002 also mandates that the certified system “will yield the most accurate, secure, and expeditious system for voting and tabulating election results” and this will not happen with the current machines in place.

There is nothing in HAVA that prevents us from going back to hand counts, as long as the minimum requirements of HAVA are complied with.

Since there is no way to comply with HAVA with the existing machines and illegal certifications as they are, Hand Counts are the answer. By Law, a backup plan was to be in place for such a time as this. We can not use this equipment to count Our sacred American Vote.